153 US 308
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TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1893.

No. 1102.

MORRIS BLITZ, PLAINTIFF IN ERROR,

vs.

THE UNITED STATES.

IN ERROR TO THE DISTRICT COURT OF THE UNITED STATES FOR THE WESTERN DISTRICT OF MISSOURI.

FILED JANUARY 19, 1894.

(15,486.)



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1 UNITED STATES OF AMERICA, *sct:*

In the District Court of the United States for the Western Division of the Western District of Missouri.

Be it remembered that at a regular term of the United States district court in and for the western division of the western district of Missouri, begun and held at Kansas City, in said district, on the first Monday in November, 1893, and on the — day of said term, when and where were present Hon. Jno. F. Philips, judge; Hon. Geo. A. Neal, United States attorney; Jno. P. Tracey, United States marshal, and Jno. M. Nuckols, clerk, the following proceedings were had as the same fully appears of record and on file in said office of said court, to wit:

And now, on the 26th day of April, 1893, comes the grand jury and makes presentment as follows;

UNITED STATES
vs.
MORRIS BLITZ. } 1383. Illegal voting.

A true bill.

HENRY C. HARPER, *Foreman.*

Which said indictment is in words and figures as follows, to wit:

UNITED STATES OF AMERICA,
Western District of Missouri, Western Division Thereof.

In the District Court of the United States for the Western Division of the Western District of Missouri, April Term, 1893.

The grand jurors of the United States of America, duly chosen, selected, empaneled, sworn, and charged to inquire of and concerning crimes and offences in the western district of Missouri
2 and western division thereof, on their oaths present that on the 8th day of November, A. D. 1892, at Kansas City, in the county of Jackson and State of Missouri, there was then and there an election duly and in due form of law had and held for choice of Representative in the Congress of the United States, which said place aforesaid was then and there a portion of the Fifth Congressional district of Missouri.

And the grand jurors aforesaid upon their oaths aforesaid do further find and present that at the said election one Morris Blitz did then and there unlawfully, falsely, knowingly, and feloniously personate and vote and attempt to vote in the name of another person other than his own name to these grand jurors unknown, contrary to the form of the statute in such cases made and provided and against the peace and dignity of the United States.

Second count.

And the grand jurors upon their oaths aforesaid, in the name and by the authority of the United States, do further find and present that at said election the said Morris Blitz did then and there, in the western division of the western district of Missouri, unlawfully, falsely, knowingly, and feloniously vote at a place, to wit, at the sixth precinct in the Second ward in said city, where he was not then and there lawfully entitled to vote, contrary to the form of the statute in such cases made and provided and against the peace and dignity of the United States.

Third count.

And the grand jurors aforesaid upon their oaths aforesaid, in the name and by the authority of the United States, do further find and present that at the said election the said Morris Blitz did then and there, in the western division of the western district of
3 Missouri, unlawfully, knowingly, and feloniously vote at said election for a candidate for the same office for Representative in the Congress of the United States more than once, contrary to the form of the statute in such cases made and provided and against the peace and dignity of the United States.

G. A. NEAL,
United States Attorney, Western District of Missouri.

A true bill.

HENRY C. HARPER, *Foreman.*

Which said indictment is endorsed on the back as follows: No. 1383. United States *vs.* Morris Blitz. Indictment under section 5511 R. S. U. S. for illegal voting. A true bill. Henry C. Harper, foreman. Witnesses: F. L. Flanders, John Hobdy, C. Russell, J. F. Wachts, F. Russell, T. A. Dodds. Filed April 26th, 1893. John M. Nuckols, clerk.

4 And afterwards, on the 5th of May, 1893, the following entry appears of record, to wit:

UNITED STATES
vs. } 1383.
MORRIS BLITZ.

Now, on this day, comes the district attorney on behalf of the United States, and the defendant in his own proper person, as well as by his attorney, T. T. Crittenden, Esq., and on application of the defendant this cause is continued to the next term of this court and at defendant's cost, and that execution issue therefor.

And now, on November 8th, 1893, the following further entry appears of record, to wit:

UNITED STATES
vs. } 1383.
MORRIS BLITZ.

This day comes the district attorney on behalf of the United States, and the defendant in his own proper person, as well as by his attorneys, Crittenden and Stiles, who, being duly arraigned, for plea says he is not guilty as charged in the indictment, and now, this case coming on for trial, it is ordered that a jury come, to wit, L. Means, Hugo Bartz, Theo. Lacoff, W. P. Buckner, Frank Mills, J. W. Yardley, J. M. Johnson, Daniel Sherman, Thomas Lee, J. D. Thompson, James Miller, and A. W. Walker, twelve good and lawful men, who are duly empaneled and sworn to well and truly try the issues joined. Thereupon evidence is heard, arguments
5 are made by counsel, and after hearing the charge of the court the jury retire to consider what verdict they shall render in the premises, and after due consideration the jury return into court the following verdict, to wit:

"We, the jury, find the defendant guilty in manner and form as charged in the first count of the indictment.

A. W. WALKER, *Foreman.*"

"We, the jury, find the defendant guilty in manner and form as charged in the second count of the within indictment.

A. W. WALKER, *Foreman.*"

"We, the jury, find the defendant guilty in manner and form as charged in the third count of the within indictment.

A. W. WALKER, *Foreman.*"

Thereupon al land singular the premises are submitted and the defendant is remanded into the custody of the marshal to await the sentence of the court.

And afterwards, on the 10th day of November, 1893, the following entry appears of record, to wit:

UNITED STATES
vs. } 1383.
MORRIS BLITZ.

This day comes defendant, by his attorneys, Crittenden and Stiles, and files motion for new trial in this cause.

And on this 23rd day of November, 1893, the following further entry appears of record, to wit:

UNITED STATES
vs. } 1383.
MORRIS BLITZ.

This day comes defendant, by his attorneys, Crittenden and Stiles, and in support of motion for a new trial and in arrest
6 of judgment the following affidavits are filed: A. L. Sherman, Jas. W. Ligget, Putnam F. Peet, M. D.; Wm. Stewart,

Wm. H. Christee, Miles McTerman, Jno. W. Canfield, Nathaniel Dreyfoos, Jas. Shannon, J. D. Carpenter, Chas. Simington, Harry Skinner, Sidney Myers, Clara Blitz, Casimere M. J. J. Welch, Annie Kahn, Joseph Higgins, C. S. Owsley, recorder of voters (3); Morris Blitz, Chas. A. Oldham, R. H. Carr, Sherman Mack, Henry Ellard, Carl J. Spengler, Sam. Brown, Thos. P. Evans, O. B. Washburn, T. W. Wright, T. H. Purtitt, Frank Williams, Harry Ashbrook, Seaman Russell, Leo Muhs, John Hayes, Thos. T. Crittenden, and Edward H. Stiles.

And now, on the 23rd day of November, 1893, the following further entry appears of record, to wit:

UNITED STATES
vs. } 1383.
MORRIS BLITZ.

This day comes defendant, by his attorneys, Crittenden and Stiles, and files motion in arrest of judgment in this cause.

And now, on the 24th day of November, 1893, the following entry appears of record, to wit:

UNITED STATES
vs. } 1383.
MORRIS BLITZ.

This day comes the district attorney, on behalf of the United States, and files counter-affidavit of J. T. Wachs in answer to affidavits entered herein in support of motion for new trial and arrest of judgment.

6½ And now, on the 27th day of November, 1893, the following entry appears of record, to wit:

UNITED STATES
vs. } 1383.
MORRIS BLITZ.

This day again come the parties to this cause, the district attorney on behalf of the United States, and the defendant in person as well as by his attorneys, Crittenden and Stiles, and the motions for a new trial and in arrest of judgment coming on for hearing the same are argued and submitted, the motion for a new trial is by the court overruled, and the motion in arrest of judgment is by the court taken under advisement.

7 And afterwards, on the 28th day of November, the following further entry appears of record, to wit:

UNITED STATES
vs. } 1383.
MORRIS BLITZ.

Now come again the parties to this cause as on yesterday, Geo. A. Nael, the district attorney, on behalf of the United States, and the

said defendant, Morris Blitz, being present in person and by his attorneys, and the motion in arrest of judgment heretofore argued and submitted to the court and by the court taken under advisement and consideration and being by the court fully seen and understood, and the court being fully advised in the premises, it is ordered and adjudged by the court that the said motion be overruled as to the first and third counts of said indictment, and as to the second count of said indictment it is ordered and adjudged by the court that said motion be sustained, and that as to said second count the said defendant is hereby ordered to be discharged and to go hence without day.

And now the following entry appears of record on the 28th day of November, 1893:

UNITED STATES
vs. } 1383.
MORRIS BLITZ.

Now, on this day, comes United States, by Hon. Geo. A. Nael, district attorney, and the defendant, Morris Blitz, in person
8 and by attorney, and being inquired of by the court whether he had anything to say why the sentence of the court should not be pronounced against him, the said defendant having answered that he has nothing further to say than he hath said why sentence should not be pronounced and judgment rendered against him upon the verdicts of the jury in this behalf, and the matters and things in all and singular being considered and understood by the court, it is considered, ordered, and adjudged by the court that on the verdict of the jury rendered herein upon the first count of the indictment that said defendant shall be imprisoned in the penitentiary at Jefferson City, Missouri, for and during the period of one year and one day, said term and period to begin on the 28th day of November, A. D. 1893.

And upon the verdict of the jury rendered herein on the third count of the indictment it is considered, ordered, and adjudged by the court that said defendant shall be imprisoned in the penitentiary at Jefferson City, Missouri, for and during the period and term of one year and one day; and it is further ordered and adjudged by the court that the sentence rendered herein upon the verdict of the jury upon the said third count of the indictment and the said period and term of said imprisonment upon said third count shall begin upon the expiration and execution of the said sentence rendered herein upon the verdict of the jury upon the first count of the indictment.

And it is further considered, ordered, and adjudged by the court that said defendant shall pay the costs of this prosecution in this behalf laid out and expended, and that execution issue therefor.

And it is further considered, ordered, and adjudged by the court that the marshal transport the said Morris Blitz to the said peniten-

tiary and deliver him, the said Morris Blitz, to the warden of
9 said penitentiary, and that the said warden detain the said Morris Blitz according to this sentence rendered on the verdicts and counts aforesaid, and that the clerk of this court immediately certify under the seal of the court and deliver to the marshal of this district a copy of this judgment, sentence, and order to accompany the body of the said Morris Blitz, and to be left therewith at the said penitentiary, the said copy to be warrant and authority for the transportation and imprisonment of the said Morris Blitz, as hereinbefore provided.

And now, on the 28th day of November, 1893, the following further entry appears of record, to wit:

UNITED STATES
vs. } 1383.
MORRIS BLITZ.

Ordered by the court that the defendant be given until the 9th day of December, 1893, to file bill of exceptions.

And now, on the 4th day of December, 1893, the following entry appears of record, to wit:

UNITED STATES
vs. } 1383.
MORRIS BLITZ.

This day comes the defendant, by his attorneys, Crittenden and Stiles and Lyman, and by leave of court files his petition for writ of error and of assignment of error.

And now, on the 8th day of December, 1893, the following further entry appears of record, to wit:

10 UNITED STATES
vs. } 1383.
MORRIS BLITZ.

Now, on this day, again comes the United States, by Hon. Geo. A. Neal, United States district attorney, and the defendant, Morris Blitz, by his attorneys, T. T. Crittenden and A. S. Lyman, and the petition heretofore presented for writ of error, with assignment of errors therein, is taken up and seen by the court and the writ granted and signed by the court, and the court doth also sign and issue the proper citation of said writ to said district attorney.

And now, on the 9th day of December, 1893, the following further entry appears of record, to wit:

UNITED STATES
vs.
MORRIS BLITZ. } 1383.

Now again come herein the United States, by Hon. Geo. A. Neal, district attorney, and the defendant, Morris Blitz, by his attorneys, T. T. Crittenden and A. S. Lyman, and the said defendant presents his application that the court affix the amount of his bail bond and order a supersedeas thereon during the pendency of the writ of error in the supreme court; which said application is denied by the court for the reason that, in its opinion, there *is* no probable grounds of error.

And now, on the 9th day of December, 1893, the following entry appears of record, to wit:

11 UNITED STATES
vs.
MORRIS BLITZ. } 1383.

It is ordered that the time for filing the bill of exceptions herein be extended to the 16th day of December, 1893.

And now, on the 15th day of December, 1893, the following further entry appears of record, to wit:

UNITED STATES
vs.
MORRIS BLITZ. } 1383.

Now, on this day, comes the defendant, by his attorneys, and files herein his bill of exceptions.

Which said bill of exceptions *are* in words and figures, to wit:

12 In the United States District Court, Western Division of the Western District of Missouri, November Term, 1893.

UNITED STATES
vs.
MORRIS BLITZ. } Bill of Exceptions.

Be it remembered that on the trial of the issues herein the United States, to maintain the same, called the following-named witnesses, who, being first severally duly sworn, testified, among other things, as follows:

C. S. OWSLEY, a witness on behalf of the United States, being called and sworn, testified:

I am recorder of voters and was such at the general election of 1892. I am the custodian of the poll books used at the general election of 1892 at the sixth precinct of the Second ward.

(Witness produces poll books.)

Books offered in evidence to show that the name of William J. Algeo, registered as of number 410 Main street, Kansas City, Mis-

souri, appeared on said poll books and that said name was voted at that election: also to show that the name of James Willard, registered as from number 414 Main street, in said city, appeared on said book and that said name was voted at said election.

Said book was shown to the jury.

13 Witness also produced a form of the ballot used at said election. Said ballot was shown in evidence, and was as follows, to wit:

Democratic Ticket.	*Republican Ticket.*
For presidential electors.	For presidential electors.
At large, Charles B. McAfee.	At large, David P. Dwyer.
At large, Edwin R. McKee.	At large, Samuel F. Scott.
1st dist., Francis L. Marchand.	1st dist., John C. McKinley.
2nd dist., Edgar M. Harber.	2nd dist., Charles D. Morris.
3d dist., Horatio F. Simrall.	3rd dist., Levi T. Moulton.
4th dist., Randolph T. Davis.	4th dist., Thomas C. Dugan.
5th dist., Mathew V. L. McClelland.	5th dist., Joseph McCoy.
6th dist., William L. Jarrott.	6th dist., Robert E. Lewis.
7th dist., Henry Parks Lay.	7th dist., Odon Guitar.
8th dist., John D. Bohling.	8th dist., Walbridge J. Powell.
9th dist., H. Martin Williams.	9th dist., Brison H. Anderson.
10th dist., De Witt Clinton Taylor.	10th dist., William J. Hollocher.
11th dist., William Cullinane.	11th dist., Frederick D. Brownell.
12th dist., John O'Neill.	12th dist., Max Cotany.
13th dist., Leigh B. Woodside.	13th dist., Benjamin B. Cahoon.
14th dist., Henry N. Phillips.	14th dist., Grant Gillespie.
15th dist., James W. George.	15th dist., Thomas W. Ditty.
For governor.	For governor.
William J. Stone.	William Warner.
For lieutenant governor.	For lieutenant governor.
John B. O'Meara.	Rudolph W. Mueller.
For secretary of state.	For secretary of state.
Alexander A. Lesueur.	Henry T. Aikire.
For State auditor.	For State auditor.
14 James M. Seibert.	John M. Weeks.
For State treasurer.	For State treasurer.
Lon. V. Stephens.	Fred. J. Wilson.
For attorney general.	For attorney general.
Robert F. Walker.	Davit Murphy.
For railroad and warehouse com.	For railroad and warehouse com.
James Cowgill.	Wendell S. Hathaway.
For judge supreme c't, div. No. 1.	For judge supreme c't, div. No. 1.
George B. McFarlane.	William W. Edwards.
For judges supreme c't, div. No. 2.	For judges supreme c't, div. No. 2.
Gavon D. Burgess.	Charles Nagel.
Thomas A. Sherwood.	William S. Shirk.
For judge K. C. c't of appeals.	For judge K. C. c't of appeals.
Jackson L. Smith.	John B. Hale.
Constitutional amendment—Yes.	Constitutional amendment—Yes.
Constitutional amendment—No.	Constitutional amendment—No.
For Representative in Congress, 5th dist.	For Representative in Congress, 5th dist.
John C. Tarsney.	Webster Davis.

For judges of the cir. c't, 16th cir.
Edward L. Scarrett.
James H. Slover.

For judge of the criminal court.
John W. Wofford.

For county marshal.
Henry P. Stewart.

For judge county c't, western dist.
Phillip J. Henn.

For sheriff.
John P. O'Neill.

For county collector.
Elihu W. Hayes.

For county treasurer.
John O. Capelle.

For prosecuting attorney.
Marcy K. Brown.

For county assessor.
George N. Petty.

For coroner.
John M. Langsdale.

For public administrator.
Thomas J. Seehorn.

For county surveyor.
Frank J. O'Flaherty.

For State senator, 5th dist.
Richard A. Love.

For representative, 4th dist.
Hugh C. Ward.

For constable, 3d district.
Edward Kirk.

People's Ticket.

For presidential electors.
At large, Phineas D. Keynon.
At large, William Anderson.
1st dist., William Quayle.
2nd dist., William Quayle.
3rd dist., Marion C. Martin.
4th dist., Richard P. Stafford.
5th dist., Benjamin Elliott.
6th dist., Lee D. Ewing.
7th dist., Joseph Whittaker.
8th dist., Zuangle R. Furgusson.
9th dist., Robert Cawthorn.
10th dist., John W. Gladwill.
11th dist., James H. White.
12th dist., Henry L. Roth.
13th dist., Henry J. Herrick.
14th dist., Myron M. Pease.
15th dist., Stanford Smith.

For governor.
Leverett Leonard

For judges cir. c't, 16th cir.
Luther C. Slavens.
—— ——.

For judge of the criminal court.
Robert Adams.

For county marshal.
Melville Hulse.

For judge Co. c't, western dist.
Herman H. Stukenberg.

For sheriff.
Charles P. Baldwin.

For county collector.
George Hoffman.

For county treasurer.
Mathew Roberts.

For prosecuting attorney.
Frederick W. Griffen.

For county assessor.
Harry B. Walmsley.

For coroner.
Ernst Von Quast.

For public administrator.
Fred. C. Hey.

For county surveyor.
Persifor H. Grinter.

For State senator, 5th dist.
James M. Burrus.

For representative, 4th dist.
Ethelbert F. Allen.

For constable, 3d district.
William J. Carter.

Prohibition Ticket.

For presidential electors.
At large, William H. Gillhousen.
At large, William Q. Bennett.
1st dist., Winfield Scott Little.
2nd dist., William Clarence Irwin.
3rd dist., John E. Fesler.
4th dist., Rob't ? C. Vanderhoof.
5th dist., John Wesley Jacobs.
6th dist., Sam'l W. Crutcher.
7th dist., James M. Clark.
8th dist., Simon B. Phifer.
9th dist., Barton W. Ford.
10th dist., Alexander Noble.
11th dist., James M. Hamlin.
12th dist., John T. Field.
13th dist., Isaac S. Baker.
14th dist., Leighton A. Ellis.
15th dist., George E. Bowling.

For governor.
John Sobieski.

For lieutenant governor.
George W. Williams.

For secretary of state.
David B. Page.

For State auditor.
Joseph B. Dines.

For State treasurer.
D. N. Thompson.

For attorney general.
William R. Littell.

For railr. & wareh. com.
John O'Hearn.

For judge supt. ct., div. No. 1.
Orville D. Jones.

For judges supt. ct., div. No. 2.
William S. Shirk.
Cleveland F. Moulton.

For judge K. C. court of appeals.
Jackson L. Smith.

17 Constitutional amendment—Yes.
Constitutional amendment—No.

For Representative in Cong., 5 D.
Columbus D. Whitehead.

For judges of the 16th circuit court.
Luther C. Slavens.

For judge of the criminal court.
George D. Sherwin.

For county marshal.
George E. Peace.

For judge of the county court, western dist.
Samuel T. Warren.

For sheriff.
Hamilton W. Pullman.

For county collector.
Ulysses S. G. Twiss.

For county treasurer.
Gideon Vesterveit.

For prosecuting attorney.
George N. Elliott.

For county assessor.
Howard C. Dehoney.

For coroner.
Henry W. Miller.

For public administrator.
James M. Rhodes.

For county surveyor.
Persifor H. Grinter.

For lieutenant governor.
William Stevenson Crouch.

For secretary of state.
Edwin E. McClellan.

For State auditor.
David L. Stewart.

For State treasurer.
Monroe Ingraham.

For attorney general.
Walter Emmett Johnson.

For railr. & wareh. com.
Andrew G. Brown.

For judge supt. ct., div. No. 1.
Eugene Ayers.

For judges supt. ct., div. No. 2.
Austin F. Batts.

Constitutional amendment—Yes.
Constitutional amendment—No.

For Representative in Cong., 5 —
Andrew J. Powell.

For State senator, 5th dist.
18 James M. Burrus.
For representative, 4th dist.
Albert L. Netterfield.
For constable 3rd dist.

—— ——.

SEAMAN RUSSELL, being sworn, testified:

I live in Kansas City and resided here November 8th, 1892, and on that day was one of the judges of election at the 6th precinct in Second ward. The polling booth was on Missouri avenue between Delaware and Main streets and was in a shoemaker's shop, the front of which was glass. I know the defendant, Blitz, by sight, but had no personal acquaintance with him. I have seen him often. He came to the polls between ten and eleven o'clock in the morning and voted in the name of William Algeo. I asked him if that was his name; he said yes. I replied that he did not look like a man that I had seen vote under that name in that precinct at the spring election before. That man had a scar on his face. Blitz assumed that he was a traveling man and had just come in to vote. He then voted as Algeo. In the afternoon between three and four o'clock he came in again wearing a different hat from the one he wore in the morning. He got a ballot from the judge having the ballots without giving his name. He came up after preparing his ballot to cast it and I asked him his name; he said Martin Willard. I had the registration list and told him there was no Martin Willard on the list; that the name of James Willard appeared on the list. He said, "That is my name, James Martin Willard." I protested against his voting, but he had his ballot prepared. I objected to his voting because I remembered distinctly he voted in the morning as Algeo. He assumed to be angry; said he was a working
19 man and had just got off to vote, and that he would vote. Doctor Flanders was there and took some part in the conversation. Andy Foley was there and I understood him to insist that it was all right. He then voted. A man then came in whom I have since learned was Thomas Dodd and made some inquiry as to what name Blitz had voted.

And said witness, being cross-examined, testified:

I am not certain about the time, but to the best of my recollection the times are approximately as I have given them:

JAMES F. WACHS, being duly sworn, testified:

I live at 1814 East 11th street, Kansas City, Missouri. At general election of 1892, on November 8th, I was a special deputy United States marshal and was stationed at precinct number 6 in the Second ward, between Delaware and Main streets, on Missiouri avenue; was there about the voting place all day; knew Blitz about three years. I was on police force about three years and knew him by sight, but had no personal acquaintance with him. The voting booth had a

glass front, and one on the outside could see the voters voting. I saw Blitz come there about ten o'clock in the morning and saw him vote, and he came back between three and four in the evening and voted again.

And said witness, being cross-examined, testified:

I was looking through the glass and saw him get a ballot and go through the form of voting like other men did. I saw him in the evening get a ballot and go into the stall and come out and give it to the judge.

Q. Why did you not arrest Blitz when you saw that he had voted?

20 Objected to by United States attorney. Whereupon counsel for defendant did then and there insist before the judge that the said question and the evidence sought thereby should be allowed on the ground that it was competent and material and relevant, and prayed the court to allow the same, and the said judge did then and there refuse to allow said question to be answered and sustained the objection of the district attorney thereto. Whereupon the counsel for the defendant did then and there propose his objection to the ruling of the court and prayed that his bill of exceptions might be sealed, and it is sealed accordingly.

THOMAS A. DODDS, being sworn, testified:

I live in Kansas City and was special deputy marshal on election day at the general election of 1892. I went to the sixth precinct of the Second ward in company with J. K. Siddell, a regular deputy marshal. I am not certain about the time, but my judgment is it was about between four and five o'clock in the evening. I saw the defendant Blitz in the polling place with a ticket in his hand and saw him hand it to the election judge. I then went in and inquired in what name he had voted, and was informed that he had voted in the name of Willard. I then went out to have Siddell arrest him, but he seemed to have gotten away. I knew Blitz and knew he did not live in that ward, and it was for that reason I was going to have him arrested.

21 F. W. FLANDERS, being sworn, testified:

I live in Kansas City, Missouri. In the evening of November 8, 1892, at the general election I was challenger at precinct sixth in the Second ward. I saw Blitz (whom I now recognize) coming and offer to vote. I challenged him and Andy Foley come over and said he was all right. I then gave away and Blitz voted. Mr. Dodds came in about that time and inquired of me in whose name Blitz had voted. I inquired of the judges and learned that he had voted in the name of Willard and so informed Dodds.

And said witness, being cross-examined, testified:

I do not know Blitz personally, but I now recognize him as the one I referred to.

And thereupon the United States, by its attorney, rested its case.

Whereupon the attorneys for the defendant, Morris Blitz, to maintain and prove the said issues on his part, called the following-named witnesses, who, being severally duly sworn, testified as follows:

JOHN HOBDY, being sworn, testified:

I live in Kansas City. Have been a policeman for four
22 years. I saw the defendant at the sixth precinct of the Second ward on the day of the general election of 1892. It was late in the evening. He was on the outside.

And said witness, being cross-examined, testified:

I would not have seen him had he not been pointed out to me. There was some conversation about him, and I heard that he had been there before.

ANDREW P. FOLEY, being duly sworn, testified:

I live in Kansas City, Missouri, and was challenger at the sixth precinct of the Second ward at the general election held November 8, 1892, and was there all day. I have known defendant ten or twelve years. He lives in the Ninth ward. I did not see him at the sixth precinct in the Second ward until late in the evening. I saw him on the outside; called him up to the door; gave him a half-dollar and told him to get me some cigars, which he did and left. I did not see him about that precinct at any other time during that day.

And said witness, being cross-examined, testified:

Q. Were you not indicted at this court for violations of the election laws growing out of transactions at this same precinct?

By the COURT: That question is not competent. You cannot show that a witness is indicted, and if he is indicted he is presumed to be innocent.

23 C. S. OWSLEY, being duly sworn, testified:

Witness was asked to produce poll book of election precinct No. 51 of the Ninth ward of Kansas City, Missouri, same used at general election of 1892. Book was produced and shown in evidence to prove that the name of Morris Blitz, of 806 E. 14th street, was voted at that precinct and ward.

MORRIS BLITZ, being sworn in his own behalf, testified:

I live at 804 E. 14th street, Kansas City, Missouri, and voted at precinct No. 51 in the Ninth ward at the general election of 1892. I did not vote at the sixth precinct of the Second at any time during that election. I was at that precinct late in the evening, and Mr. Foley called me and gave me a half-dollar and asked me to get

some cigars for him, which I did. I voted at precinct No. 51 at about ten o'clock in the morning.

And said witness, being cross-examined, testified:

I am not much acquainted with Foley. I know him when I see him.

Q. Why would Foley give you, a stranger, money to buy cigars for him and let you go away with the money?

A. I don't know why.

WILLIAM POWERS, being sworn, testified:

I live in Kansas City, Missouri. At the general election held November 8, 1892, was a clerk of election at the sixth precinct, Second ward, and was there all day. I have known defend-
24 ant for about three years. I did not see him at that precinct on that day.

Said witness, being cross-examined, testified as follows:

My occupation is that of bartender for Andy Foley.

25 And thereupon the defendant closed his case and this concluded the testimony in the case.

Whereupon, after argument by counsel and after hearing the charge of the court, the jury retired, and, having considered their verdict, returned into court a verdict of guilty upon all three counts of the indictment.

That thereafter and on the tenth day of November, 1893, defendant filed his motion for a new trial herein as follows:

In the District Court of the United States of America for the Western Division of the Western District of Missouri.

UNITED STATES }
vs. } No. 1383, November Term, 1893.
MORRIS BLITZ. }

Comes now the defendant and files his motion for a new trial and in arrest of judgment on the grounds following:

First. The court erred in admitting improper evidence.

Second. The court erred in excluding proper evidence offered by the defendant.

Third. The court erred in its instructions or charge to the jury.

Fourth. Because of the misconduct of the jury, as shown by attached affidavits.

Fifth. Because of newly evidence, to be shown by attached affidavits.

T. T. CRITTENDEN,
EDWARD H. STILES,
Att'ys for Defendant.

26 And thereafter, in due time, defendant filed the following affidavits in support of his said motion:

STATE OF MISSOURI, } ss:
County of Jackson, }

Alexander L. Sherman, of lawful age, being duly sworn, deposeth and says that he is an attorney-at-law and resid-s at Long building, on Main street and Missouri avenue, and has lived in Kansas City for seven years last past; that deponent knows defendant Blitz and has known him for upwards of four years.

That deponent is also acquainted with Doctor Putnam F. Peet and has known him for six years.

That deponent remembers the general election of 1892, held November 8th, 1892, in Kansas City aforesaid; that on that day deponent was at the polling place of the sixth election precinct, at No. 10 West Missouri avenue, and was there at about two p. m., when Doctor Putnam F. Peet voted.

That deponent was outside the polling place at the time and looked in through the window and saw Doctor Peet vote; that this deponent noticed a delay in the voting and saw the person who voted just before Doctor Peet voted.

27 That said person was not the defendant Blitz, nor was the said Blitz then in said polling place at that time. Deponent further says that the person who preceded Dr. Peet in voting as aforesaid was stout and light complexioned and had a light mustache and hair and Blitz is slim and very dark complexioned.

ALEXANDER L. SHERMAN.

Subscribed and sworn to before me this 20th day of November, 1893.

[SEAL.] JACOB B. YOUNG,
Notary Public.

My commission expires April 8th, 1897.

U. S. District Court, West. Div. of West. Dist. of Missouri, November Term, 1893.

THE UNITED STATES OF AMERICA }
against
BLITZ. }

STATE OF MISSOURI, } ss:
County of Jackson, }

James W. Liggett, being first duly sworn, deposes and says—

That he resides at cor. 15th & Charlotte streets, in Kansas City, Missouri, and has resided in said city for about eighteen years last past; that deponent knows defendant Blitz and has known him for upwards of five years in Kansas City; that deponent was one of the judges of the election at the polling place at 15th & Holmes street at the general election held November 8th, 1892, and was at that place all of said election day. Deponent further says that he saw defendant at the polls, cor. 15th & Holmes street, at about 2.30

28 p. m. of said date, and that he remained there ten or fifteen minutes; that then he and a young man named Dreyfoos and another named Baker got into a hack and drove away. Deponent further says his attention was called to defendant's presence at that time because of a disturbance there at that time, and deponent ordered the driver of said hack to go away, and then deponent saw defendant and the others named get into the hack and drive away.

JAMES W. LIGGETT.

Subscribed and sworn to before me this 16th day of November, 1893.

[SEAL.] A. F. SMITH,
Notary Public.

My commission expires June 13, 1894.

United States District Court, West. Div., West. Dist. of Missouri, November Term, 1893.

UNITED STATES }
ag'st
MORRIS BLITZ. }

STATE OF MISSOURI, }
County of Jackson, } *ss:*

Dr. Putnam F. Peet, of lawful age, being duly sworn, deposes and says that he resides at No. 1100 East Sixth street, in Kansas City, Missouri, and has resided in said city for ten years last past; that deponent voted at the last general election held in said city and cast his ballot at the polling place of the 6th precinct, located at that time at No. 10 West Missouri avenue, in said city.

That he so voted at about two o'clock p. m. of said election day; that he remembers the person who voted just before deponent did; that there was a dispute about the residence of said person
29 and about the initials of the name given by the person, and the vote was delayed a little on that account, but was finally taken by the judges; that deponent saw the person who so preceded him in voting on that day at said polling place; that said person was fair-complexioned and was quite stout and wore a light-colored mustache and light-colored hair.

That deponent has seen the defendant Blitz and is positive that said Blitz was not the person who voted just before he did, as above stated.

PUTNAM F. PEET, *M. D.*

Subscribed and sworn to before me this 20th day of November, 1893.

[SEAL.] HOLLY JARBOE,
Notary Public, Jackson County, Mo.

My commission expires August 11, 1895.

Said affidavit is endorsed on the reverse side thereof in words and figures as follows to wit:

"United States *vs.* Morris Blitz. Putnam F. Peet, M. D. Affidavit on motion for new trial. Filed March 23, 1893. John M. Nuckols, clerk."

United States Court, West. Division, West. District of Mo.

UNITED STATES
vs.
MORRIS BLITZ.

STATE OF MISSOURI,
County of Jackson, } *ss:*

W. M. STEWART, of lawful age, being first duly sworn, deposes and says: That he resides at No. 414 Main street in Kansas
30 City, Mo., and has resided in said city 15 years last past; that deponent was a judge at precinct No. 6, 2nd ward, at the general election in said Kansas City, Mo., on the 8th of November, 1892, and that I was present from the opening of the polls until the close of said day; that I have known the defendant, Morris or Pinky Blitz, for the past 5 years, and that said Blitz did not vote or offer to vote at precinct named above on that day; said precinct No. 6 was located at No. 10 West Mo. avenue.

WILLIAM STEWART.

Subscribed and sworn to before me this 20th Nov., 1893.

[SEAL.] HOLLY JARBOE,
Notary Public in and for Jackson County, Mo.

My commission expires August 12, 1895.

Which said affidavit was endorsed on the reverse side thereof in words and figures as follows, to wit:

"No. 1893. United States *vs.* Morris Blitz. Affidavit of William Stewart on motion for new trial. Filed Nov. 23, 1893. Jno. M. Nuckols, clerk."

U. S. District Court, West. Div., West Dist. of Missouri, November Term, 1893.

UNITED STATES OF AMERICA
ag'st
BLITZ.

STATE OF MISSOURI,
County of Jackson, } *ss:*

William H. Christie, of lawful age, being first duly sworn, deposes and says that he resides at No. 1428 Wyandotte
31 street, in Kansas City, Mo., and has resided in that place upwards of one year next prior to the last general election, and that he has resided in said Kansas City for twenty years last past. De-

ponent further says that he is acquainted with the defendant Blitz, and has known him for about six years last past. Deponent further says that he is acquainted with David Blitz, a brother of the defendant, and knows that he and his brother resemble each other very closely and dress very nearly alike, and unless one was well acquainted with both of them it would be difficult to tell them apart from each other. Deponent further says that he remembers the day of the last general election held in Kansas City on the 8th day of November, 1892, and that at that time he was the proprietor of a saloon at No. 9 Missouri avenue, in said city, which place was directly opposite the polling place of *of* voting precinct No. six of said city at said election. Deponent further says that he was around his said place of business all day on said day of election from about 9.30 o'clock in the forenoon until about 5.30 o'clock in the evening of that day, having remained there purposely because of quarrels about the polls and the likelihood of injury to his property there, and that during all of that time he was on the street outside of said No. 9 West Missouri avenue. Deponent further says that during the said time, to wit, from 9.30 a. m. up to 5.30 p. m., said defendant was not at said polling place to deponenet's knowledge. Deponent further says that if said defendant had been there at or about said voting precinct depo-ent would certainly have seen him there, and deponent did not see him there during that period of that day.

WILLIAM H. CHRISTIE.

Subscribed and sworn to before me this 15th day of November, 1893.

[SEAL.] A. F. SMITH,
Notary Public.

My commission expires June 13, 1894.

Which said affidavit is endorsed on the reverse in words
32 and figures as follows, to wit:

"1893. United States *vs.* Morris Blitz. Affidavit of W. M. Christie on mo. for new trial. Filed November 23rd, 1893. John M. Nuckols, clerk."

U. S. District Court, West Div., West Dist. of Missouri, November Term, 1893.

UNITED STATES OF AMERICA
ag'st
BLITZ.

STATE OF MISSOURI,
County of Jackson, } *ss:*

Miles McTernan, being duly sworn, deposes and says—

That he resides at the corner of Independence avenue and Porter road, Kansas City, county and State aforesaid, and has been a resident of said city for upwards of eleven years last past.

Deponent further says that he is acquainted with the defendant Blitz, and has known him for about two years. Deponent further says that he r-members the day of the general election day, November 8th, 1892, and that he spent all day of that day at the polls in the Second and Sixth wards of said city working for the candidates for constables and sheriff in said wards. Deponent further says that he was at the polling place of the 6th precinct in the 2nd ward, located opposite Christie's saloon on West Missouri avenue, between 9 o'clock in the forenoon and 12 o'clock noon of that day, and that he was there again from two o'clock in the afternoon until about half past four o'clock of the afternoon of that day. Deponent further says that he noticed the people about said polling place during the times he was there as aforesaid, and that he knows that the defendant was not at or about said polling place at any time during the hours above mentioned.

33 MILES McTERNAN.

Subscribed and sworn to before me this 16th day of November, 1893.

[SEAL.] A. F. SMITH,
Notary Public.

My commission expires June 13, 1894.

On the reverse side of said affidavit appears the following indorsements in words and figures as follows:

"1893. United States *vs.* Morris Blitz. Affidavit of Miles McTernan on motion for new trial. Filed November 23rd, 1893. John M. Nuckols, clerk."

U. S. District Court, West. Div., West. Dist. of Missouri, November Term, 1893.

UNITED STATES OF AMERICA }
ag'st }
BLITZ. }

STATE OF MISSOURI, }
County of Jackson, } *ss:*

John W. Canfield, being first duly sworn, deposes and says:

That he lives at No. 1713 Harrison street, in Kansas City, county and State aforesaid, and has resided in said city about twenty-three years; that deponent is acquainted with the defendant Blitz, and has known him about three or four years; that deponent is the owner of a barber shop located at No. 12 West Missouri avenue, and has been owner and proprietor of such shop for about two years past; that deponent remembers the general election held in Kansas City on November 8th, 1892, and on that day deponent was at his shop, adjoining the place where the polls were held for precinct No. 6, at said election; that deponent was at his shop from nine a. m. to 12.30 or 1 p. m.; that at 1 o'clock in the afternoon
34 deponent went to his dinner and returned at about two p. m. and remained at his shop until 5 p. m.; that deponent's shop

has large glass windows in the front on Missouri avenue, and deponent was enabled to see persons who were outside about the polling place, and that he knew and recognized many persons whom he knew there at that time. Deponent further says that he did not see defendant Blitz at or about said polling place at any time during that day while he was at his shop, and deponent avers that he would have seen and noticed him if he had been there or about there.

JOHN W. CANFIELD.

Subscribed and sworn to before me this 16th day of November, 1893.

[SEAL.] A. F. SMITH,
Notary Public.

My commission expires June 13, 1894.

On the reverse side of said affidavit appears the following endorsement:

"1893. United States *vs.* Morris Blitz. Aff't of John W. Canfield on mo. for N. T. Filed November 23rd, 1893. Jno. M. Nuckols, clerk."

U. S. Dist. Court, West. Div., West. Dist. of Missouri, November Term, 1893.

THE UNITED STATES OF AMERICA *ag'st* BLITZ.

STATE OF MISSOURI, *County of Jackson,* } *ss:*

Nathaniel Dreyfoos, of lawful —, being duly sworn, deposes and says that he resides at No. 1408 Cherry street, Kansas
35 City, Missouri, and at and prior to Nov. 1st, 1892, he resided at No. 612 Oak St., in said city, and that he had resided in said Kansas City about twenty-one years. Deponent further says that he is acquainted with defendant, Blitz, and has known him for about twelve years; that deponent also knows defendant's brother, David, and knows of the remarkable likeness they bear to each other. Deponent further says that on election day, November 8th, 1892, after voting at his home precinct, at 5th street near Holmes street, he came down to polling place No. —, at the Nelson block, on East Missouri avenue, and from there went west on said avenue to polling place No. six, located at number 8 West Missouri avenue, where he remained up to noon-time of that day. Deponent further says that he reached the same polling place, number six, at No. 8 West Missouri avenue, at about seven-thirty o'clock in the morning, and that from that time until the time he left there, at noon of said date, said defendant was not at or in said polling place nor at any place about there.

Deponent further says that if the defendant had come to said polling place during said period deponent certainly would have seen him, and that he was not there.

NATHANIEL DREYFOOS.

Subscribed and sworn to before me this 15th day of November, 1893.

[SEAL.] A. F. SMITH,
Notary Public.

My commission expires June 15, 1894.

On the reverse side of said affidavit the following endorsement appears:

"1893. United States *vs.* Morris Blitz. Aff't of Nat. Dreyfoos on mo. for new trial. Filed Nov. 23, 1893. Jno. M. Nuckols, clerk."

36 U. S. District Court, West. Div., West. Dist. of Missouri, November Term, 1893.

THE UNITED STATES OF AMERICA
ag'st
MORRIS BLITZ.

STATE OF MISSOURI, } ss:
County of Jackson, }

James Shannon, of lawful age, being duly sworn, deposes and says that he resides at No. 1812 Oak street, in Kansas City, in the county and State aforesaid, and has resided in said city for upwards of fifteen years last past; that deponent is engaged in the business of selling law books.

Deponent further says that he is acquainted with the defendant, Blitz, and has known him for about one year.

Deponent further says that he first saw defendant to know who he was on the day of the general election held in Kansas City on the 8th day of November, 1892.

The deponent on that day was one of the judges of election at and for precinct No. 48, located at 18th and Locust streets, in Kansas City, and was in the polling place of said precinct from the opening of the poll up to the time said poll was closed.

That at eleven o'clock in the forenoon of said election day and for a few minutes before and after deponent noticed defendant sitting in the said polling place and pointed him out to his brother, F. R. Shannon, and also to Dr. Carpenter, another of the judges there, and inquired if they knew him and if he was a deputy U. S. marshal; that said Frank P. Shannon thereupon told deponent that he was not a U. S. deputy marshal, and that his name was Pinky Blitz or Morris Blitz.

Deponent further says that he fixes the time at a few minutes before and a few minutes after eleven o'clock because just
37 about then he called his brother's attention to the necessity of arranging to send for something to eat.

JAMES A. SHANNON.

Subscribed and sworn to before me this 18th day of November, 1893.

ROSS W. LATSHAW,
Justice of the Peace, 6th District, Kaw Township,
Jackson County, Missouri.

U. S. District Court, West. Div., West. Dist. of Missouri, November Term, 1893.

U. S. OF AMERICA
ag'st
MORRIS BLITZ.

STATE OF MISSOURI, } *ss:*
County of Jackson, }

Dr. J. D. Carpenter, being first duly sworn, deposes and says—

That he resides at No. 1721 Grand avenue, in Kansas City aforesaid, and has resided in said city for twelve years last past; that he is practising physician and surgeon; that he knows the defendant, Blitz, and has known him since the day of the general election of 1892.

That on said day deponent was one of the judges at precinct No. 48, in said city, and while there, at about eleven o'clock or a few minutes after, James Shannon, another of the judges, called deponent's attention to defendant, who was there in the polling place, and then it was learned that he was Pinky Blitz or Morris Blitz, the defendant.

J. D. CARPENTER, M. D.

Subscribed and sworn to before me this 18th day of November, 1893.

38 ROSS W. LATSHAW,
Justice of the Peace, 6th District, Kaw Township,
Jackson County, Missouri.

On the reverse side of the above two affidavits of said James A. Shannon and J. D. Carpenter, which follow each other on the same sheet, is the following indorsement:

"1893. U. S. *vs.* Morris Blitz. Affidavits of James Shannon and Dr. Carpenter on motion for N. trial. Filed Nov. 23, 1893. Jno. M. Nuckols, clerk."

U. S. District Court, West Div., West. Dist. of Missouri, November Term, 1893.

THE UNITED STATES
vs.
MORRIS BLITZ.

STATE OF MISSOURI, } *ss:*
County of Jackson, }

Charles Simington, of lawful age, being duly sworn, deposes and says that he resides at Pac. house, in Kansas City, Missouri; that

he voted at the general election held in Kansas City on November 8th, 1892, and deposited his ballot in and at the following place: At No. 10 West Missouri avenue, in said Kansas City, being voting precinct No. 6.

That deponent so voted at said election between the hours of 6.30 and 7. p. m. of said election day; that there were three or four persons in said poll when deponent voted, but defendant, Blitz, was not one of them.

CHARLIE SIMINGTON.

Subscribed and sworn to before me this 19th day of November, 1893.

[SEAL.] HOLLY JARBOE,
Notary Public, Jackson County, Mo.

My commission expires August 11, 1895.

On the reverse side of said affidavit the following endorsement appears:

"1893. United States *vs.* Morris Blitz. Affidavit of Charles Simington on mo. for N. T. Filed Nov. 23, 1893. Jno. M. Nuckols, clerk.

U. S. District Court, West. Div. of West. Dist. of Missouri, November Term, 1893.

THE UNITED STATES OF AMERICA } *ag'st* BLITZ. }

STATE OF MISSOURI, } *County of Jackson,* } *ss:*

Harry Skinner, being first duly sworn, deposes and says that he resides at 1522 Cherry street, in Kansas City, Missouri, and has resided in said city about fourteen years; that he is acquainted with defendant, Blitz, and has known him about three years; that deponent was a poll-worker on the day of the general election held in Kansas City on November 8th, 1892, and was about the polls of the different precincts in the Ninth ward during all of that day; that deponent saw defendant several times during the afternoon of said election day at some one of the polling places in the Ninth ward, either at 15th & Holmes, at 16th & McGee, or at 18th & Locust streets; that deponent distinctly remembers that he saw said defendant between three and four o'clock in the afternoon at the polling place at 18th & Locust street-, and to the best of deponent's knowledge the time he saw him there was after half past three o'clock in the afternoon.

HARRY SKINNER.

Subscribed and sworn to before me this 17th day of November, 1893.

[SEAL.] EDWIN A. KRAUTHOFF,
Notary Public, Jackson County, Missouri.

On the reverse side of said affidavit the following endorsement appears:

"1893. United States *vs.* Morris Blitz. Affidavit of Harry Skinner on motion for N. T. Filed Nov. 23, 1893. Jno. M. Nuckols, clerk."

U. S. District Court, West. Div., West. Dist. of Missouri, November Term, 1893.

THE U. S. OF AMERICA
ag'st
MORRIS BLITZ.

STATE OF MISSOURI, *County of Jackson,* } *ss:*

Sidney Meyers, being first duly sworn, deposes and says that he resides at No. 523 Wyandotte street, in Kansas City, Missouri, and has resided in said city for 12 years last past.

That at the time of the general election held in Kansas City aforesaid on the 8th day of November, 1892, deponent resided at No. —— street, in said city, within the limits of voting precinct No. 6.

41 That said polling place at said election was located at No. 10 or 12 West Missouri avenue, next to the barber shop.

That deponent voted at said precinct on said election day and deposited his ballot there about six (6) o'clock in the afternoon of said date.

his
SIDNEY x MEYERS.
mark.

Subscribed and sworn to before me this 19th day of November, 1893.

[SEAL.] HOLLY JARBOE,
Notary Public, Jackson County, Mo.

My commission expires August 11th, 1895.

On the reverse side of said affidavit the following endorsement appears:

"1893. United States *vs.* Morris Blitz. Affidavit of Sidney Meyers on motion for N. T. Filed Nov. 23, 1893. Jno. M. Nuckols, clerk."

U. S. District Court, West. Div., West. District of Missouri, November Term, 1893.

THE UNITED STATES OF AMERICA
ag'st
MORRIS BLITZ.

STATE OF MISSOURI, *County of Jackson,* } *ss:*

Mrs. Clara Blitz, of lawful age, being first duly sworn, deposes, and says that she is the mother of Morris Blitz, the defendant herein,

and resides at No. 806 East 14th street, in Kansas City, Missouri; that deponent has resided at said number for sixteen years
42 last past, and that defendant has always made his home with her; that deponent remembers the day of the general election held in Kansas City, Missouri, on the 8th day of November, 1892, and deponent remembers that defendant spent the night before said election day at home and did not leave the house 806 East 14th street on the morning of the election day until a few minutes after ten o'clock.

CLARE BLITZ.

Subscribed and sworn to before me this 17th day of November, 1893.

[SEAL.] EDWIN A. KRAUTHOFF,
Notary Public, Jackson County, Missouri.

On the reverse side of said affidavit the following endorsement appears.

"No. 1893. United States *vs.* Morris Blitz. Affidavit of Clara Blitz on mo. for new trial. Filed Nov. 23, 1893. Jno. M. Nuckols, clerk."

U. S. District Court, West. Div., West. Dist. of Missouri, November Term, 1893.

THE UNITED STATES OF AMERICA
vs.
BLITZ.

STATE OF MISSOURI, } ss:
County of Jackson,

Cassimire M. J. J. Welch, of lawful age, being first duly sworn, deposes and says that he resides at No. 1619 Locust street, in Kansas City, Missouri, and has lived there upwards of two years last past. Deponent further says that he is a plumber by trade
43 and follows his trade in Kansas City as aforesaid. Deponent further says that he is personally acquainted with the defendant, Blitz, and has known him for about four years last past in said Kansas City. Deponent further says that he was one of the Democratic watchers or challengers at the polling place of the 49th voting precinct, at corner of 19th and Cherry streets, Kansas City, Mo., at the election held in Kansas City on the 8th day of November, 1892. Deponent further says that he went to said precinct at about nine o'clock in the morning of said election day and remained inside the polling place from that time until he went to dinner, between twelve o'clock noon and one o'clock in the afternoon of that day. To the best of deponent's knowledge he left the polling — to go to dinner at about twelve fifteen o'clock. Deponent further says that after he left the polling place of the 49th precinct on his way to dinner he saw the defendant, Blitz, who was then standing on the corner of 18th & Locust streets, opposite the polling

place of precinct No. 48, at the corner of 18th and Locust streets, and that at that time it was a minute or two after a quarter past twelve o'clock.

CASSIMIRE M. J. J. WELCH.

Subscribed and sworn to before me this 15th day of November, 1893.

[SEAL.] EDWIN A. KRAUTHOFF,
Notary Public, Jackson County, Missouri.

On the reverse side of said affidavit the following endorsement appears:

"1893. United States *vs.* Morris Blitz. Affidavit of Cassimire J. J. Welch on mo. for N. T. Filed Nov. 23, 1893. Jno. M. Nuckols, clerk."

44 U. S. District Court, West. Div., West Dist. of Missouri, November Term, 1893.

THE UNITED STATES OF AMERICA)
ag'st
MORRIS BLITZ.)

STATE OF MISSOURI,)
County of Jackson,) *ss:*

Annie Kahn, of lawful age, being first duly sworn, deposes and says—

That she is the sister of Morris Blitz, the defendant above named, and resides at No. 705 E. Sixth street, in Kansas City, Missouri; that at and prior to the 8th day of November, 1892, deponent resided at her mother's house, at 806 E. 14th street, in Kansas City, Missouri; that deponent remembers the general election held in Kansas City on said 8th day of November, 1892; that defendant spent the night previous to said election at his mother's house, at 806 E. 14th street aforesaid.

The deponent prepared breakfast for defendant on the morning of said election day, and that she remembers that defendant did not leave the house that morning until a few minutes after ten o'clock.

Deponent further says that deponent's brother David bears a great resemblance to defendant.

ANNIE KAHN.

Subscribed and sworn to before me this 18th day of November, 1893.

[SEAL.] EDWIN A. KRAUTHOFF,
Notary Public, Jackson County, Missouri.

On the reverse side of said affidavit the following endorsement appears:

45 "No. 1893. United States *vs.* Morris Blitz. Affidavit of Annie Kahn on mo. for new trial. Filed Nov. 23, 1893. Jno M. Nuckols, clerk."

In the U. S. District Court, West. Div. of West. Dist. of Missouri, November Term, 1893.

THE UNITED STATES OF AMERICA }
ag'st
BLITZ. }

STATE OF MISSOURI, }
County of Jackson, } *ss:*

Joseph Higgins, being first duly sworn, deposes and says that he is thirty years of age and is a resident of Kansas City, Missouri, and that he has resided in said city for nine years last past. Deponent further says that he is acquainted with the defendant, Blitz, and has known him for upwards of five years in Kansas City aforesaid. Deponent further says that he is also acquainted with defendant's brother, David Blitz, and that he knows that there is a remarkable likeness between defendant and his brother David, so much so that one has often been mistaken for the other by people who knew both of them.

Deponent further says that he remembers the general election held in Kansas City on the 8th day of November, 1892, and that he was one of the judges of election at that time and was appointed for and acted as such at the polling place of precinct No. 6, located at No. 10 West Missouri avenue, in the Second ward of Kansas City, Missouri. Deponent further says that he reached said polling place on the morning of said election day before the time fixed to open the poll, and that he remained within said polling
46 place during all of the day except half an hour, from 12.30 to 1 p. m., — deponent went to dinner, up to the time of closing the polls after said election in the evening of said day.

Deponent further says that the defendant, Blitz, was not in the polling place of said precinct at any time during the afternoon of said 8th day of November, 1892, and most certainly did not vote or offer to vote there either in his own name or in the name of any other person.

Deponent further says that he was in a position in said polling place on that day to see and did see every person who came into that polling place and offered to vote, and that said defendant, Blitz, did not come into said polling place during that day.

JOSEPH HIGGINS.

Subscribed and sworn to before me this 20th day of November, 1893.

[SEAL.] HOLLY JARBOE,
Notary Public, Jackson County, Mo.

My commission expires August 11th, 1895.

On the reverse side of said affidavit the following endorsement appears:

"1893. United States *vs.* Morris Blitz. Affidavit of Joseph Higgins on motion for new trial. Filed Nov. 23, 1893. Jno. M. Nuckols, clerk."

U. S. District Court, West. Div., West. Dist. of Missouri, November Term, 1893.

THE UNITED STATES }
vs.
MORRIS BLITZ. }

STATE OF MISSOURI, }
County of Jackson, } *ss:*

47 C. S. Owsley, being first duly sworn, deposes and says:

That he is recorder of voters of Kansas City, Jackson county, Missouri, and has been such officer for three years last past; that as such officer he has the care and custody of the poll books used at the general election held in Kansas City on the 8th day of November, 1892; that from an examination and inspection of said polls book and of the poll book used at the sixth voting precinct of said city at said election, which was filed with defendant after said election, as required by law, it appears as follows:

That Henry Ellard voted ballot number 140 at said precinct at said election.

That T. W. Wright voted ballot number 142 at said precinct at said election.

That Sam. Brown voted ballot number 145 at said precinct at said election.

That Dr. Putnam F. Peet voted ballot number 152 at said precinct at said election.

That Carl J. Spengler voted ballot No. 160 at said precinct at said election.

That Sydney Meyers voted ballot No. 163 at said precinct at said election.

That Harry Ashbrook voted ballot No. 162 at said precinct at said election.

That Thomas P. Evans voted ballot No. 170 at said precinct at said election.

That Frank Williams voted ballot No. 179 at said precinct at said election.

That Charles Simington voted ballot No. 183 at said precinct at said election.

That Sherman Mack voted ballot No. 186 at said precinct at said election.

48 That T. H. Purtle voted ballot No. 188 at said precinct at said election.

CHAS. S. OWSLEY.

Subscribed and sworn to before me this 20th day of November, 1893.

[SEAL.] HOLLY JARBOE,
Notary Public, Jackson County, Mo.

My commission expires August 11th, 1895.

On the reverse side of said affidavit the following endorsement appears:

"1893. United States *vs.* Morris Blitz. Affidavit of C. S. Owsley, recorder of voters, on motion for new trial. Filed Nov. 23, 1893. Jno. M. Nuckols, clerk."

U. S. District Court, West. Div., West. Dist. of Missouri, November Term, 1893.

THE UNITED STATES
ag'st
MORRIS BLITZ.

STATE OF MISSOURI,
County of Jackson, } *ss:*

C. S. Owsley, being duly sworn, deposes and says that he is the recorder of voters of Kansas City, Missouri, and has been such for three years last past; that as such officer deponent has the care and custody of the poll books used at the general election held Nov. 8th, 1892, at Kansas City, and certified and returned to him by the election officers of said election; that he has examined the poll book of precinct No. 6 of said Kansas City at said election and
49 finds that O. B. Washburne voted at said precinct at said election and that his ballot was numbered one hundred and forty-four (144).

CHAS. S. OWSLEY.

Subscribed and sworn to before me this 21st day of November, 1893.

[SEAL.] HOLLY JARBOE,
Notary Public, Jackson County, Mo.

My commission expires August 11th, 1895.

On the reverse side of said affidavit the following endorsement appears:

"1893. United States *vs.* Morris Blitz. Affidavit of C. S. Owsley, recorder of voters, on mo. for new trial. Filed Nov. 23, 1893. Jno. M. Nuckols, clerk."

U. S. District Court, West. Div., West. Dist. of Missouri, November Term, 1893.

THE UNITED STATES OF AMERICA
ag'st
BLITZ.

STATE OF MISSOURI,
County of Jackson, } *ss:*

—— ——, of lawful age, being duly sworn, deposes and says:

That he is the recorder of voters of Kansas City, Missouri, and has been such officer for three years last past; that as such officer deponent has the custody of the poll books and returns certified to and delivered

to him by the election officers of and at said general election held in Kansas City on the 8th day of November, 1892.

That at the request of the defendant's attorney herein
50 deponent examined the poll book used at voting precinct No. 6 at said general election and certified and delivered to deponent by the election officers of said precinct.

That it appears from said poll book that James Willard voted at said precinct at said election, and that his ballot number is 185; that it also appears from said poll book that there were 188 votes cast at said precinct at said election; that it also appears from said poll book that Wm. J. Algeo voted at said precinct at said election, and that his ballot was numbered 151.

That it appears from the poll book of precinct No. 51 used at said general election that Morris Blitz voted at said precinct, and that his ballot was numbered 167, and that the total number of ballots cast at said precinct was 331 at said election.

CHAS. S. OWSLEY.

Subscribed and sworn to before me this 17th day of November, 1892.

[SEAL.] ISAAC B. MARLATT,
Notary Public in and for Jackson County, Missouri.

On the reverse side of said affidavit the following endorsement appears:

"1893. United States *vs.* Morris Blitz. Affidavit of C. S. Owsley on mo. for new trial. Filed Nov. 23, 1893. Jno. M. Nuchols, clerk."

U. S. District Court. West. Div., West. Dist. of Mo., November Term, 1893.

UNITED STATES }
vs. }
MORRIS BLITZ. }

51 STATE OF MISSOURI, }
County of Jackson, } *ss:*

Morris Blitz, being first duly sworn, deposes and says—

That he is the defendant in the above-entitled action, and resides at 806 E. 14th street, in the city of Kansas City, State of Missouri; that deponent is twenty-two years of age, and has lived in Kansas City since he was six years of age.

That deponent was indicted in this action, as he is informed and believes, by the April grand jury, and that deponent having been arrested and taken before the United States authorities *and* gave bail to appear for trial herein; that deponent left the management of his case entirely to his attorney, Hon. Thomas T. Crittenden, but that, as deponent is informed and believes, his said attorney was absent from the city and the State of Missouri from about the time deponent gave bail herein until just prior to the time when this

action was set for trial, and that deponent was unable to see and concult with his said attorney or to prepare for trial herein.

That, as deponent is informed and believes, the indictment herein is so indefinite in its terms as to the time or times of day when it charges deponent with illegal voting, the name of the person whom deponent is charged with having impersonated in voting, the places at which said acts were done, that neither defendant nor his said attorneys could anticipate just what the evidence as to these matters on the part of the United States would be, and that for these reasons defendant and his attorneys were taken by surprise at the testimony of the witnesses Seaman and Wachs; that defendant voted at precinct No. 6 of the Second ward between ten and eleven o'clock in the morning of said election day.

That deponent would have produced his mother, Clara Blitz; his sister, Annie Kahn; Charles A. Oldham, and several other
52 persons, all of whose affidavits are now on file herein, to show beyond question that deponent was not and could not have been at the 6th district or precinct poll of the Second ward at any time during the forenoon of said election had it been made known to him or to his counsel that such was to be the evidence for the United States herein; that deponent was not aware nor was his said attorney until the trial herein that evidence would be adduced on said trial that between 3 p. m. and 4 p. m. of said election day that deponent voted at the said 6th precinct of the Second ward; that such evidence was a surprise to this defendant, and defendant has discovered since said trial that there are several witnesses in Kansas City, Missouri, who are credible and trustworthy, who would testify if they had been called at said trial that defendant was at the polling place at 18th & Locust from three o'clock until four o'clock of the afternoon of said election day, and was not away from there during said time; that defendant has also discovered since said trial that he can prove beyond question that the vote of James Willard, the only vote under that name cast at said precinct No. 6 at said election, was not cast there until nearly seven o'clock in the evening, and was the third ballot from the last one cast at said polling place at said election; that all this he can prove by the affidavits on file herein of C. S. Owsley, recorder of voters, showing the numbers of ballots cast by parties who voted before and after said James Willard voted, and the affidavits of Frank Williams, Harry Ashbrook, Thomas P. Evans, and Sherman Mack and T. H. Purtell, all of which are on file herein.

Deponent further says that he has discovered since said trial that the person who voted at said precinct as W. J. Algeo, at said election, was seen by Dr. Putnam F. Peet and Attorney A. L. Sherman at the time he voted, and that the person seen by them was not the defendant, Blitz; that Doctor Peet voted ballot No. 152, being immediately following the said W. J. Algeo, who voted ballot
53 No. 151, and that there was a little delay occasioned by the questioning of some one as to the initials of Algeo's name and his residence, and that Peet saw the person, and that he was a

short, stout man of fair complexion and fair hair and mustache, and did not at all resemble defendant.

That none of the matters of evidence now in possession of defendant, above set forth or referred to, were known to defendant at the time of said trial, but all have been brought to his knowledge since said trial; that defendant has used all the diligence he could to prepare for the trial of this case, consistent with his knowledge of what evidence was to be given for the United States or what was necessary to establish his innocence of the charges alleged against him; that deponent has no knowledge of or experience in matters of law or trials and depended solely upon his attorney to advise him as to what he would have to show in his defense, and that this was denied him on account of the absence of his said attorney from the city and State, as hereinabove stated, until just prior to the trial of this action.

Deponent further says that all of the newly discovered evidence hereinabove referred to is material to the issue herein and can be produced at a new trial if one be given to defendant.

That all of the persons whose affidavits are on file herein with defendant's motion for a new trial are residents of Kansas City, Missouri, and can and will be produced upon a new trial of this action.

MORRIS BLITZ.

Subscribed and sworn to before me this 22nd day of November, 1893.

[Seal of Criminal Court of Jackson County, Mo.]

JNO. H. THOMSON, *Clerk*,
By E. H. THOMSON, *D. C.*

On the reverse side of said affidavit the following endorsement appears:

"1893. United States *vs.* Morris Blitz. Affidavit of Morris
54 Blitz on motion for new trial. Filed Nov. 23, 1893. Jno. M. Nuckols, clerk."

U. S. Dist. Court, West. Div., West. Dist. of Missouri, November Term, 1893.

THE UNITED STATES OF AMERICA }
ag'st
MORRIS BLITZ. }

STATE OF MISSOURI, }
County of Jackson, } *ss:*

Charles A. Oldham, being first duly sworn, deposes and says—

That he resides at 519 Wyandotte street, in the city of Kansas City, county and State aforesaid, and has been a resident of said city for thirteen years last past. Deponent further says that he is acquainted with the defendant above named, Morris Blitz, and has known him for ten years in Kansas aforesaid.

Deponent further says that he remembers the day of the general election of 1892, held in Kansas City aforesaid on the 8th day of November, 1892, and that in the morning of that day deponent was at and about the polling place of precinct No. 51, located at East 14th street between Charlotte and Campbell streets, and that at or about half past ten o'clock in the morning of that day the defendant came to the polling place and voted and remained there talking with me for a few minutes, when he left me saying that he was going to 18th and Locust street.

CHAS. A. OLDHAM.

Subscribed and sworn to before me this 20th day of November, 1893.

55 [SEAL.] HOLLY JARBOE,
Notary Public, Jackson County, Mo.

My commission expires August 11th, 1895.

On the reverse side of said affidavit the following endorsement appears:

"1893. United States *vs.* Morris Blitz. Affidavit of Chas. A. Oldham on mo. for new trial. Filed Nov. 23, 1893. Jno. M. Nuckols, clerk."

U. S. District Court, West. Div., West. Dist. of Missouri, November Term, 1893.

UNITED STATES OF AMERICA }
ag'st
BLITZ. }

STATE OF MISSOURI, }
County of Jackson, } *ss:*

R. H. Carr, being duly sworn, deposes and says:

That he resides at No. 211 West Fifth street, in Kansas City, Missouri, and has resided in said city for more than twenty years last past. The deponent's employment is now and has been for many years past driving hack in this city; that on the day of the last general election held in Kansas City, on the 8th day of November, 1892, deponent was driving hack for L. F. Calhoun, whose place of business is at Fourth and Wyandotte streets; that deponent knows defendant Blitz and has known him for four years past; that on the day of said election deponent had said defendant Blitz in his hack from two o'clock in the afternoon until about three o'clock in the afternoon; that he got into the hack at 15th and Holmes and we drove to different polling places in the Ninth ward, and
56 finally left him at the polling place at 18th and Locust streets at about three o'clock in the afternoon; that deponent remained there some five or ten minutes, and that when he left there said defendant was still there.

That at about 3.30 p. m. deponent took one —— Dreyfoos from 18th & Locust to the polling place at West Missouri avenue, oppo-

site Christie's place, and that deponent remained at the place a few minutes; that it was four o'clock when deponent left there and returned to 18th & Locust.

Deponent further says that when he returned from West Missouri avenue to 18th and Locust said defendant Blitz was still there around the polls.

R. H. CARR.

Subscribed and sworn to before me this 16th day of November, 1893.

[SEAL.] EDWIN A. KRAUTHOFF,
Notary Public, Jackson County, Missouri.

On the reverse side of said affidavit is the following endorsement: "1893. United States *vs.* Morris Blitz. Affidavit of R. H. Carr on motion for new trial. Filed Nov. 23, 1893. Jno. M. Nuckols, clerk."

U. S. Dist. Court, West. Div., West. Dist. of Missouri, November Term, 1893.

UNITED STATES OF AMERICA
ag'st
MORRIS BLITZ.

STATE OF MISSOURI,
County of Jackson, } *ss:*

57 Sherman Mack, being duly sworn, deposes and says:

That he resides at No. 127 West Levee, in Kansas City, Missouri, and has resided in Kansas City for twelve years last past.

That deponent remembers the general election held in Kansas City on November 8th, 1892, and that he voted at said election at precinct No. 6, located at No. 10 West Missouri avenue; that he went to the polling place after quitting his work, and that he cast his ballot at 10 minutes or 15 minutes to seven o'clock that evening.

That there was a person voting just as defendant offered his ballot at said precinct, and deponent waited until he voted.

That deponent saw the person after he had voted, but that he did not recognize him as any one he knew.

That defendant knows Morris or Pinkey Blitz, but that the person who preceded him in voting at said precinct as aforesaid was not Morris or Pinky Blitz; that deponent's business has brought him about the city a good deal, and that he often saw said Blitz and knew him well, and that he would certainly have recognized him if he was the person who voted just before, as aforesaid, or if he had been in said voting precinct at that time.

SHERMAN MACK.

Subscribed and sworn to before me this — day of November, 1893.

[SEAL.] HOLLY JARBOE,
Notary Public in and for Jackson Co., Missouri.

My commission expires August 11th, 1895.

On the reverse side of said affidavit the following endorsement appears:

"No. 1893. United States *vs.* Morris Blitz. Affidavit of
58 Sherman Mack on motion for new trial. Filed Nov. 23, 1893. Jno. M. Nuckols, clerk."

U. S. District Court, West. Div., West. Dist. of Missouri, November Term, 1893.

THE UNITED STATES }
ag'st
MORRIS BLITZ. }

STATE OF MISSOURI, }
County of Jackson, } *ss:*

Henry Ellard, of lawful age, being duly sworn, deposes and says that he resides at No. 517 Wyandotte street, in Kansas City, Missouri, and has resided in said city for 12 years last past; that deponent voted at the general election held in said city on November 8th, 1892, and cast his ballot at the 6th voting precinct of said city, at No. 10 West Missouri avenue; that deponent so voted at said precinct between the hours of one o'clock p. m. and two o'clock p. m. of said day of election, and I am positive that I voted in the afternoon of said day.

HENRY ELLARD.

Subscribed and sworn to before me this 19th day of November, 1893.

[SEAL.] HOLLY JARBOE,
Notary Public in and for the County of Jackson, State of Missouri.

My commission expires August 11th, 1895.

On the reverse side of said affidavit the following endorsement appears:

59 "1893. United States *vs.* Morris Blitz. Affidavit of Henry Ellard on motion for new trial. Filed Nov. 25, 1893. Jno. M. Nuckols, clerk."

In the U. S. District Court, West. Div., West. Dist. of Missouri, November Term, 1893.

THE U. S. OF AMERICA }
ag'st
MORRIS BLITZ. }

STATE OF MISSOURI, }
County of Jackson, } *ss:*

Carl Spengler, being first duly sworn, deposes and says:

That he resides at No. —— street in Kansas City, Missouri, and that he has resided in said city for many years last past, and is now

in wholesale liquor business in said city; that at the time of the general election, held in Kansas City on the 8th day of November, 1892, deponent resided at No. 400 Main Str. in said city; that deponent voted at said general election and cast his ballot at voting precinct No. 6, located on West Missouri avenue, opposite Christie's place.

Deponent further says that he voted at said precinct between the hours of 5.30 and 6 o'clock p. m. on the day of said election.

CARL J. SPENGLER.

Subscribed and sworn to before me this 1 day of November, 1893.

[SEAL.] HOLLY JARBOE,
Notary Public, Jackson Co., Mo.

My commission expires Aug. 11th, 1895.

On the reverse side of said affidavit the following endorse-
60 ment appears:

"No. 1983. United States *vs.* Morris Blitz. Affidavit — Carl Spengler on mo. for new trial. Filed Nov. 23, 1893. Jno. M. Nuckols, clerk."

U. S. District Court, West. Div., West. Dist. of Missouri, November Term, 1893.

THE UNITED STATES
vs.
MORRIS BLITZ.

STATE OF MISSOURI,
County of Jackson, } *ss:*

Sam. Brown, of lawful age, being duly sworn, deposes and says that he resides at No. 127 West Levee, in Kansas City, Missouri; that he voted at the general election held in Kansas City on November 8th, 1892, and deposited his ballot in and at the polling place at No. 10 West Missouri avenue, in said Kansas City, being voting precinct No. 6.

That deponent so voted at said election between the hours of 1 p. m. and 1.30 p. m. of said election day.

SAM. BROWN.

Subscribed and sworn to before me this 19th day of November, 1893.

[SEAL.] HOLLY JARBOE,
Notary Public, Jackson County, Mo.

My commission expires August 11th, 1895.

On the reverse side of said affidavit the following endorsement appears:

"United States *v.* Blitz. No. 1893. Affidavit of Sam.
61 Brown on mo. for new trial. Filed Nov. 23, 1893. Jno. M. Nuckols, clerk."

U. S. District Court, West Div., West Dist. of Missouri. November Term, 1893.

THE UNITED STATES }
ag'st
MORRIS BLITZ. }

STATE OF MISSOURI, }
County of Jackson, } *ss:*

Thomas P. Evans, of lawful age, being duly sworn, deposes and says that he resides at No. 519 Wyandotte street, in Kansas City, Missouri, and has resided in said city for 7 years last past; that deponent voted at the general election held in said city on November 8th, 1892, and cast his ballot at the 6th voting precinct located at No. 10 West Missouri avenue in said city; that deponent so voted at said election between the hours of 6.15 p. m. and 6.30 p. m. said election day.

THOMAS P. EVANS.

Subscribed and sworn to before me this 19th day of November, 1893.

[SEAL.] HOLLY JARBOE,
Notary Public in and for Jackson County, Missouri.

My commission expires August 11th, 1895.

On the reverse side of said affidavit the following endorsement appears:

"1893. United States *vs.* Morris Blitz. Affidavit of Thomas, P. Evans on motion for new trial. Filed Nov. 23, 1893. Jno. M. Nuckols, clerk."

62 U. S. District Court, West. Div., West. Dist. of Missouri, November Term, 1893.

THE UNITED STATES }
ag'st.
MORRIS BLITZ. }

STATE OF MISSOURI, }
County of Jackson, } *ss:*

O. B. Washburn, of lawful age, being duly sworn, deposes and says that he resides at No. 1025 Highland avenue, in Kansas City, Missouri, and has resided in said city for nine years last past; that deponent voted at the general election held in said city on November 8th, 1892, and cast his ballot at the 6th voting precinct of said city at No. 10 West Missouri avenue; that deponent so voted at said precinct between the hours of 1.30 p. m. and 2 o'clock p. m. of said day of election.

O. B. WASHBURN.

Subscribed and sworn to before me this — day of November, 1893.

[SEAL.] HOLLY JARBOE,
Notary Public, Jackson County, Missouri.

My commission expires August 11th, 1895.

On the reverse side of said affidavit the following endorsement appears:

"1893. The United States *vs.* Morris Blitz. Affidavit of O. B. Washburn on mo. for new trial. Filed Nov. 23, 1893. Jno. M. Nuckols, clerk."

U. S. District Court, West. Div., West. Dist. of Missouri.

63 THE UNITED STATES *ag'st* MORRIS BLITZ.

STATE OF MISSOURI, *County of Jackson,* } *ss:*

T. W. Wright, of lawful age, being duly sworn, deposes and says that he resides at No. 127 West Levee street, in Kansas City, Missouri, and has resided in said city for 35 years last past; that *defendant* voted at the general election held in said city on November 8, 1892, and cast his ballot at the 6th voting precinct of said city, at No. 10 West Missouri avenue; that *defendant* so voted at said precinct between the hours of 1 p. m. and 1.30 p. m. of said day of election.

THOMAS W. WRIGHT.

Subscribed and sworn to before me this 19th day of November, 1893.

[SEAL.] HOLLY JARBOE,
Notary Public in and for the County of Jackson and State of Missouri.

My commission expires August 11th, 1895.

On the reverse side of said affidavit the following endorsement appears:

"1893. United States *vs.* Morris Blitz. Affidavit of T. W. Wright on motion for new trial. Filed Nov. 23, 1893. Jno. M. Nuckols, clerk."

64 U. S. District Court, West. Div., West. Dist. of Missouri, November Term, 1893.

THE UNITED STATES *ag'st* MORRIS BLITZ.

STATE OF MISSOURI, *County of Jackson,* } *ss:*

T. H. Purtle, of lawful age, being first duly sworn, deposes and says that he resides at No. 411 Wyandotte street, in Kansas City,

Missouri, and has resided in said city for 15 years last past. The deponent voted at the general election held in said Kansas City on the 8th day of November, 1892, and cast his ballot at precinct No. 6, located at No. 10 West Missouri avenue, in said city; that deponent so voted at said precinct a few minutes before 7 o'clock p. m. or a few minutes before the close of polls on said election day.

Deponent further says at the time of casting of said vote there were three or four other voters in booth who had either voted or were casting their votes. Deponent further says that he is personally acquainted with Morris or Pinky Blitz, and that said Blitz was not one of those present.

T. H. PURTELL.

Subscribed and sworn to before me this 19th day of November, 1893.

[SEAL.] HOLLY JARBOE,
Notary Public, Jackson County, Missouri.

My commission expires August 11th, 1895.

On the reverse side of said affidavit the following endorsement appears:

65 "1893. United States *vs.* Morris Blitz. Affidavit of Mr. Purtell on mo. for new trial. Filed Nov. 23, 1893. Jno. M. Nuckols, clerk."

U. S. District Court, West. Div., West. Dist. of Missouri, November Term, 1893.

THE UNITED STATES
ag'st
MORRIS BLITZ.

STATE OF MISSOURI,
County of Jackson, } *ss:*

Frank Williams, of lawful age, being duly sworn, deposes and says—

That he resides at No. 414 Main street, Kansas City, Missouri, and has resided in said city for 7 years last past; that deponent cast his ballot at the general election held in said city on November 8th, 1892, at the 6th voting precinct, located at No. 10 West Missouri avenue, in this city.

That deponent cast his ballot as aforesaid between the hours of 6.30 p. m. and 7 p. m. of said election day.

FRANK WILLIAMS.

Subscribed and sworn to before me this 19th day of November, 1893.

[SEAL.] HOLLY JARBOE,
Notary Public in and for Jackson Co., Missouri.

My commission expires August 11th, 1895.

On the reverse side of said affidavit the following endorse-
66 ment appears:

"1893. United States *vs.* Morris Blitz. Affidavit of Frank Williams on mo. for new trail. Filed Nov. 23, 1893. Jno. M. Nuckols, clerk."

U. S. District Court, West. Div., West. Dist. of Missouri, November Term, 1893.

THE UNITED STATES }
ag'st }
MORRIS BLITZ. }

STATE OF MISSOURI, }
County of Jackson, } *ss:*

Harry Askbrook, of lawful age, being duly sworn, deposes and says that he resides at No. 517 Wyandotte street, in Kansas City, and has resided in said city for 10 years last past; that deponent voted at the general election held in said city on November 8th, 1892, and cast his ballot at the 6th voting precinct of said city, at No. 10 West Missouri avenue; that deponent so voted at said precinct at the hour of 6 o'clock p. m. of said day of election.

HARRY ASKBROOK.

Subscribed and sworn to before me this 19th day of November, 1893.

[SEAL.] HOLLY JARBOE,
Notary Public, Jackson County, Mo.

My commission expires August 11th, 1895.

On the reverse side of said affidavit the following endorsement appears:

"1893. United States *vs.* Morris Blitz. Affidavit of Henry Ash-
brook, on motion for new trial. Filed Nov. 23, 1893. Jno.
67 M. Nuckols, clerk."

U. S. District Court, West. Div., West. Dist. of Missouri, November Term, 1893.

UNITED STATES OF AMERICA }
ag'st }
MORRIS BLITZ. }

STATE OF MISSOURI, }
County of Jackson, } *ss:*

Seaman Russell, being duly sworn, deposes and says—

That he was judge of election at district or precinct No. 6 of the Second ward of Kansas City at the general election held in said city on the 8th day of November, 1892; that he was a witness in this action on the trial before Hon. J. F. Philips in U. S. district court on the 7th day of November, 1893, and at said trial deponent

testified that defendant voted as W. J. Algeo at precinct No. 6 between 10 a. m. and 11 a. m on said election day, and that he voted as James Willard at said precinct between 3 p. m. and 4 p. m. on said election day.

SEAMAN RUSSELL.

Subscribed and sworn to before me this 19th day of November, 1893.

[SEAL.] HOLLY JARBOE,
Notary Public in and for Jackson County, Missouri.

My commission expires August 11th, 1895.

On the reverse side of said affidavit the following endorse-
68 ment appears:

"1893. United States *vs.* Morris Blitz. Aff't of Seaman Russell on mo. for new trial. Filed Nov. 23, 1893. Jno. M. Nuckols, clerk."

U. S. District Court, West. Div. West., Dist. of Missouri, November Term, 1893.

UNITED STATES OF AMERICA
ag'st
MORRIS BLITZ.

STATE OF MISSOURI,
County of Jackson, } *ss:*

Leo Muhs, of lawful age, being first duly sworn, deposes and says—

That he resides at No. 714 Cherry street, in Kansas City, county and State aforesaid, and has resided in said city about four years.

That deponent is personally acquainted with Morris Blitz, the defendant, and has known him for about two years.

Deponent further says that he has frequently been mistaken for defendant and has had people address him as Blitz.

Deponent further says that J. T. Wachs, a few days after the general election held November 8th, 1892, met deponent on Missouri avenue and accosted him, saying, "Hello, Blitz;" that deponent replied to him, "I am not Blitz," and that said Wachs answered him, saying, "I know damned well you are Blitz;" that then deponent walked away from him.

LEO MUHS.

Subscribed and sworn to before me this 18th day of November, 1893.

[SEAL.] A. F. SMITH.

69 My commission expires June 13, 1894.

On the reverse side of said affidavit the following endorsement appears:

"1893. United States *vs.* Morris Blitz. Affidavit of L. Muhs on motion for new trial. Filed Nov. 23, 1893. Jno. M. Nuckols, clerk."

U. S. District Court, West. Div., West. Dist. of Missouri.

THE UNITED STATES OF AMERICA
ag'st
MORRIS BLITZ.

STATE OF MISSOURI, } ss:
County of Jackson, }

John Hayes, of lawful age, being first duly sworn, deposes and says—

That he is a member of the detective force of the Kansas City police and has served as such for about ten years last past.

That deponent is acquainted with J. F. Wachts, who is an ex-policeman; that deponent, being in the U. S. court building, at 9th & Walnut streets, Kansas City, one day during the sitting of the U. S. grand jury of the April term, 1893, which day defendant does not now recall, waiting to be called as a witness before said grand jury, met said Watchs in the hall of the 3rd floor of said building; that said Wachts came up to de*f*eponent and asked deponent if he knew Pinky Blitz, and deponent said that he did; that said Wachts then said, "I have forgotten Blitz and have forgotten which one he is. Isn't he a slim fellow with a light mustache?" that deponent told him that Blitz was not slim nor had he a light mustache, but that he was short and stout and of a dark complexion.

70 JOHN HAYES.

Subscribed and sworn to before me this 18th day of November, 1893.

[SEAL.] A. F. SMITH,
Notary Public.

My commission expires June 13, 1894.

On the reverse side of said affidavit the following endorsement appears:

"No. 1893. United States *vs.* Morris Blitz. Affidavit of John Hays on mo. for N. T. Filed Nov. 23, 1893. Jno. M. Nuckols, clerk."

U. S. District Court, West. Div., West. Dist. of Missouri, November Term, 1893.

UNITED STATES OF AMERICA
ag'st
MORRIS BLITZ.

STATE OF MISSOURI, } ss:
County of Jackson, }

Thomas T. Crittenden, being first duly sworn, deposes and says—

That he was the attorney for the defendant herein and was present at the trial of the above-entitled action before Hon. Justice Philips and a jury on the 8th day of November, 1893, and that E. H. Stiles was not called into the case until about the time it was

called for trial; that the indictment herein was filed during the April term of this court and contains three counts, charging defendant with violations of the statutes of the United States relating to elections; that the first count charged defendant
71 with having, at the election held November 8th, 1892, at Kansas City, voted in the name of another person, and that the name of such other person is not set forth in said indictment, nor was defendant nor his attorneys aware of the name of such person until this cause was on trial; that the second count in said indictment charged defendant with having voted at the sixth election precinct in Kansas City, Mo., at said election, where he was not legally entitled to vote; that said indictment does not set forth the time when said illegal vote was so cast by defendant at the said sixth precinct, and that defendant or his attorneys had no knowledge or information as to such time until the trial herein.

That the third count of said indictment charges defendant with having voted more than once at said election; that there is nothing in said indictment setting forth the times or places when said illegal votes or either of them were cast, and that defendant or his attorneys had no information or knowledge as to what the evidence to sustain this count of the indictment would be until the trial of this action; that owing to deponent's engagement requiring his absence from Kansas City, Missouri, he was unable to consult with defendant until the day of the trial herein.

THOS. T. CRITTENDEN.

Subscribed and sworn to before me this — day of November, 1893.

——, ——.

STATE OF MISSOURI, } ss:
County of Jackson, }

I, Edward H. Stiles, one of the att'ys for defendant in the above-entitled cause, do state that I have read the foregoing statement prepared for T. T. Crittenden to sign, who is now absent in St. Louis, and that I am satisfied that the matters and facts set forth in
72 said statement are true from my conference with Gov. Crittenden and from what I have learned of the case since I was called into it at the trial, and that all of said statements, so far as they might relate to me as one of the counsel in the case is true, and that I had no knowledge of the matters therein referred to.

I also state that owing to the absence of Gov. Crittenden in Mexico and elsewhere he had not very amply opportunity to prepare the case for trial, in my judgment.

EDWARD H. STYLES.

Subscribed and sworn to before me this 20th day of Nov., 1893.

[Seal of U. S. District Court.]

JNO. M. NUCKOLS, *Clk.*

On the reverse side of said affidavit the following endorsement appears:

"1893. United States *vs.* Morris Blitz. Affidavit of Crittenden and Styles on mo. for new trial. Filed No. 23, 1893. Jno. M. Nuckols, clerk."

73 And the United States attorney, in opposition of said motion for a new trial, filed the following affidavit:

74 & 75 In the District Court of the United States, Western Division, Western District of Missouri.

UNITED STATES }
vs.
MORRIS BLITZ. }

UNITED STATES OF AMERICA, }
Western District of Missouri, } *ss:*

J. F. Wachs, of lawful age, being first duly sworn, on oath says that he has read the affidavits of John Hayes and Lee Muhs filed herein. Affiant says that it is true that he met said John Hayes at the time and place mentioned in said Hayes' affidavit, and that affiant did ask said Hayes if he knew "Pinkey Blitz," and Hayes said, Yes. Affiant then said that he, affiant, was subpœnaed on his, Blitz's, case: that the foregoing is all the conversation that occurred at that time between said Hayes and affiant; that affiant did not say to said Hayes that he had "forgotten said Blitz" nor that he had "forgotten which one he was," and that affiant did not ask said Hayes if he was a "slim fellow with a light mustache." Affiant further states that the statements in the affidavit of said Lee Muh that this affiant met said Muh on Missouri avenue and accosted him saying, "Hello, Blitz," and that said Muh replied, "I am not Blitz," and that affiant answered saying, "I know damned well you are Blitz," are absolutely untrue. Affiant says that he never met any person on Missouri avenue nor at any other place and called him Blitz.

J. T. WACHS.

Subscribed and sworn to before me this 23rd day of November, A. D. 1893.

JNO. M. NUCKLES, [SEAL.]
Clk U. S. Dist. Ct.

76 And also defendant's application for continuance in this cause filed May 5th, 1893, which is as follows:

In the District Court of the United States for the Western District of the State of Missouri.

UNITED STATES }
vs.
MORRIS BLITZ. }

Now comes the defendant in the above-entitled cause and moves the court to grant him a continuance therein until the next term of this court on account of the absence of Edward Beaman, Edward Findley, Charles Klein, and William Dreyfus, material witnesses in said cause on behalf of defendants; that said Edward Beaman, Edward Findley, Charles Klein, and William Dreyfus all reside in Kansas City, Missouri, but are now all visiting the city of Chicago, Illinois, where they are temporarily sojourning.

That he, defendant, believes that said Edward Beaman and his evidence if obtained in this cause will prove the following facts:

That on election day, the 8th day of November, 1892, defendant and said Edward Beaman were together and in the company of each other during the whole of the day, and that defendant did not vote or attempt to vote at the poles at or near Main street and Missouri avenue in Kansas City, Missouri, or vote or attempt to vote at any other poll or precinct than that at 14th and Campbell streets, and furthermore, that defendant was not at the said polls at Main and Missouri avenue during said day.

That defendant believes that the said Charles Klein and William Dreyfus and each of them and their evidence and the evidence of each of them if obtained in this cause will prove the following facts:

77

That they and each of them, during said election day on the 8th day of November, 1892, were at the polls or voting place aforesaid, at Main street and Missouri avenue, or in its immediate vicinity, and that if defendant had been at any time at said polls on said day they and each of them could and would have seen him, and that they or either of them did not see him there on said day.

That defendant believes that said Edward Findley and his evidence, if obtained in this case, will prove the following facts:

That on said election day aforesaid he, said Findley, was frequently, at different times in the day, at said polls or voting place, at Main and Missouri avenue aforesaid, and also at a certain voting place on Eighteenth street, at or near Brooklyn avenue, in said Kansas City, and that he did not see defendant at the polls, at Main and Missouri avenue aforesaid, or near there, and he did, whenever at the polls on 18th street aforesaid, see defendant there,

Which said facts, as what defendant believes that said Edward Beaman, Charley Kleine, William Dreyfus, and Edward Findley and each of them will prove, defendant believes to be true and they are true; that he is unable to prove said facts by any other witnesses whose testimony can be so readily procured or procured at all.

That he has taken out subpœnas for said Beaman, Dreyfus, and Findley, but on account of their absence they cannot be served.

That he has every reason to believe and does believe that he can procure the evidence of said witnesses at the next term of this court by reason of their returning to Kansas City by said time, which defendant understands they intend to do, or, if not, by taking their depositions.

78 That said Beaman, Kleine, Dreyfus, and Findley or either of them are not absent by the connivance, procurement, or consent of the defendant, and that this his application for a continuance is not made for vexation or delay, but to obtain substantial justice on the trial of said cause.

MORRIS BLITZ.

Morris Blitz, being first duly sworn, upon his oath states that he is the defendant in the above-entitled cause; that his foregoing application for a continuance and all the facts therein set out are true.

MORRIS BLITZ.

Subscribed and sworn to before me this 5th day of May, 1893.
JNO. M. NUCKOLS, *Clerk.*

79 And thereafter the motion for a new trial coming on to be heard the same was overruled by the court.

Whereupon the counsel for defendant then and there excepted to the ruling of the court, and prayed that his bill of exceptions might be sealed, and it was sealed accordingly.

And on the 23rd day of November, 1893, defendant filed his motion for arrest of judgment herein, which is as follows:

In the District Court of the United States within and for the Western Division of the Western District of Missouri.

UNITED STATES
vs.
MORRIS BLITZ. } Motion in Arrest of Judgment.

Now comes defendant, by his attorneys, and moves the court to arrest the judgment herein for the following reasons, viz:

First. The first count in the indictment fails to state an offense, and that it — repugnant because two separate and distinct offenses are charged therein.

Second. The second count fails to state an offense.

Third. The third count fails to state an offense.

Fourth. Said indictment does not state sufficient facts to constitute an offense.

Fifth. Upon the whole record, the verdict and the judgment is erroneous.

MORRIS BLITZ,
By his attorneys, CRITTENDEN, STILES AND OTHERS.

80 And thereafter, the counsel for the parties to this cause having been heard thereon, the court overrules the said

motion in arrest of judgment as to the first and third counts of the indictment herein and sustained said motion as to the second count of said indictment.

Whereupon the counsel for the defendant then and there excepted to the ruling of the court in overruling defendant's said motion in arrest of judgment as to the first and third counts of the indictment and prayed the court that his bill of exceptions might be sealed, and it is sealed accordingly.

Whereupon, also, the United States district attorney did then and there on behalf of the United States except to the ruling of the the court in sustaining said motion in arrest of judgment as to the second count of said indictment, and prayed the court that his bill of exceptions might be sealed, and it — sealed accordingly.

And defendant prays that his bill of exceptions, as heretofore above set forth, may be allowed, signed, and sealed, to the end that the same may be made part of the record in this cause, which is accordingly so done.

JNO. F. PHILIPS, [SEAL.]
Judge U. S. Dist. Court.

81 UNITED STATES OF AMERICA, *ss:*

To Hon. George Neal, U. S. attorney, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States to be holden at Washington on the sixth day of January, eighteen hundred and ninety-four, pursuant to a writ of error filed in the clerk's office of the district court of the United States for the western division of the western district of Missouri, wherein Morris Blitz is plaintiff in error and The United States is defendant in error, to show cause, if any there be, why the judgment in the said writ of error mentioned should not be corrected and speedy justice should not be done to the parties in that behalf.

Witness the Hon. Melville W. Fuller, Chief Justice of the United States, this 8th day of December, in the year of our Lord one thousand eight hundred and ninety-three.

JNO. F. PHILIPS,
Judge of the District Court of the United States in and for the Western Division of the Western District of Missouri.

Due and timely service of above citation is hereby acknowledged.
GEO. A. NEAL,
U. S. Attorney.

[Endorsed:] 1383. U. S. district court, west. div., west. dist. of Missouri, November term, 1893. United States, def't in error, ag'st Morris Blitz, pl'ff in error. Citation on writ of error. Filed Dec. 8th, 1893. Jno. M. Nuckols, clerk.

82 UNITED STATES OF AMERICA, *ss:*

The President of the United States to the honorable the judge of the district court of the United States for the western district of Missouri, Greeting:

Because in the record and proceedings, and also in the rendition of the judgment of a plea which is in the said district court, before you, between The United States of America, plaintiff, and Morris Blitz, defendant, a manifest error hath happened, to the great damage of the defendant, Morris Blitz, as by his complaint appears, we, being willing that error, if any hath been, should be duly corrected and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington on the seventh day of January next, in the said Supreme Court to be then and there held, that, the records and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error what of right and according to the laws and customs of the United States ought to be done.

Witness the Honorable Melville W. Fuller, Chief Justice of the said Supreme Court, this 8th day of December, in the year of our Lord one thousand eight hundred and ninety-three.

{ Seal of the United States District Court, Western Division, Western District of Missouri. }

JOHN M. NUCKOLS,
Clerk U. S. Dist. Court.

Allowed by—
JNO. F. PHILLIPS,
District Judge.

83 [Endorsed:] U. S. district court, west. div., west. dist. of Missouri, November term, 1893. United States, def't in error, ag'st Morris Blitz, pl'ff in error. Writ of error. Filed Dec. 8th, 1893. Jno. M. Nuckols, clerk.

84 UNITED STATES OF AMERICA, }
Western Division of Western District of Missouri, } *ss:*

I, John M. Nuckols, clerk of the district court of the United States of America for the western division of the western district of Missouri, in the eighth circuit, by virtue of the foregoing writ of error and in obedience thereto, do hereby certify that the foregoing pages numbered from 1 to 82, inclusive, contain a true and complete transcript of the record and proceedings had in said court, including the bill of exceptions herein in the cause of the United States, defendant in error, against Morris Blitz, plaintiff in error, as the same remain of record and on file in said office.

In testimony whereof I have caused the seal of the said court to

be hereunto affixed at the city of Kansas City, in the western district of Missouri, in the eighth circuit, this 2nd day of January, in the year of our Lord one thousand eight hundred and ninety-four, and of the Independence of the United States the one hundred and seventeenth.

{ Seal of the United States District Court, Western Division, Western District of Missouri. }

JOHN M. NUCKOLS,
Clerk U. S. Dist. Court.

[Endorsed:] No. 1383. United States district court, western div., west. — of Missouri. United States, def't in error, *vs.* Morris Blitz, pl'ff in error. Transcript of record on writ of error.

Endorsed on cover: Case No. 15,486. W. Missouri D. C. U. S. Term No., 1102. Morris Blitz, plaintiff in error, *vs.* The United States. Filed January 19, 1894.

Office Supreme Court U. S.
FILED.
MAR 31 1894
JAMES H. McKENNEY,
CLERK.

IN THE

Supreme Court of the United States.

OCTOBER TERM, 1892.

MORRIS BLITZ,
PLAINTIFF IN ERROR,

vs.

THE UNITED STATES.

No. 1102.

Error to the Western District of Missouri.

BRIEF FOR PLAINTIFF IN ERROR.

JOHN C. FAY,
Attorney for Plaintiff in Error.

WASHINGTON, D. C.:
GIBSON BROS., PRINTERS AND BOOKBINDERS.
1894.

IN THE

Supreme Court of the United States.

OCTOBER TERM, 1892.

MORRIS BLITZ, PLAINTIFF IN ERROR.

v.

THE UNITED STATES.

No. 1102.

Brief for the Plaintiff in Error.

STATEMENT.

The plaintiff in error, Morris Blitz, was convicted in the United States District Court for the Western District of Missouri upon an indictment, in three counts, charging him with violations of the provisions of section 5511 of the Revised Statutes in voting at the election held on the 8th of November, 1892. In the *first count* he was charged and convicted of voting and attempting to vote in the name of another person; the *second count* charged him with voting at a place where he was not entitled to vote, and the *third*

count charged or assumed to charge him with voting more than once.

At the trial exceptions were taken to the rejection of certain questions on the cross-examination of a witness for the defendant in error, and after verdict a motion for a new trial and a motion in arrest of judgment were interposed.

The motion for a new trial was overruled, to which exception was duly taken, and

The motion in arrest, so far as the second count in the indictment was concerned, was sustained, and as to that count the plaintiff in error was discharged. As to the first and third counts, the motion in arrest was overruled and the plaintiff in error was sentenced to imprisonment in the penitentiary for two years and two days. Exception to this ruling was duly taken.

A writ of error having been allowed, the questions presented for review are, first, the error of the court below in overruling the question put to the witness for the prosecution; second, the refusal of the motion for a new trial, and, third, the refusal of the court to arrest the judgment on the first and third counts of the indictment.

Assignment of Errors.

The court below erred--

First. In refusing to allow the witness, Wachs, to answer the question "Why did you not arrest Blitz when you saw that he voted?" propounded by counsel for Blitz on cross-examination (R. p. 12).

Second. In overruling the motion for a new trial (R. p. 46).

Third. In overruling the motion to arrest the judgment upon the first and third counts of the indictment (R. p. 47).

First Assignment of Error.

The refusal of the court to permit the witness, Wachs, to answer why he did not arrest Blitz when he saw him vote the second time.

The witness for the prosecution, Wachs, as appears from the Record, p. 11, was a special deputy United States marshal stationed at the precinct where it was sought to prove the plaintiff in error had *voted twice*, as well as having voted in the name of another, and on his direct examination had asserted that he, being such officer, had observed the plaintiff in error commit this offence of *voting twice*, an offence which he was charged with preventing. That testimony in chief was very positive, and if unshaken was sufficient probably to convict the accused; it was essentially material and a fair cross-examination was certainly due to the accused. The cross-interrogatory was certainly within a most limited cross-examination of the subject. Any conceivable answer that he could have made to it would certainly have weakened the force of his positive statement. The conviction turned upon the weight of testimony, for upon these questions it was conflicting, and to deprive, under such circumstances, the accused from probing the knowledge or the character of the prosecuting witness is a deprivation to him of a fair and impartial trial to which he is entitled.

Blake v. *Powell*, 26 Kans. 320.
Coates v. *Hopkins*, 34 Mo. 435.
Ry. Co. v. *Steinberg*, 17 Mich. 99–109.
Haines v. *Ledger*, 33 Mich. 139.

Second Assignment of Error.

The Overruling of the Motion for a New Trial.

After the close of the trial a motion for a new trial was interposed (Record, p. 14), which motion for a new trial

was upon the ground *inter alia* of newly discovered evidence, and to which was attached and made part of the record the testimony of thirty-eight witnesses, whose evidence would have triumphantly acquitted the accused. To the overruling of this motion an exception was taken and allowed (R. p. 46), and if this is before this court for review, the evidence set out on pp. 15 to 46, embodied in the bill of exceptions, shows a most palpable error in the court below in refusing the motion. This evidence most conclusively shows the entire innocence of the accused, and had the indictment been drawn with that certainty that we shall presently show the law requires, it would have enabled him to supply a most conclusive answer to the indictment.

Groping, however, in the dark as to what specific act, when, where, and how he had violated the provisions of the law with which he was charged, he was unable to present that defence which would have exonerated him. In the language of the VI Amendment to the Constitution, he was not "informed of the nature and cause of the accusation," and only after trial was he enabled to ascertain and meet the specific charge which this new evidence put it in his power to refute, the opportunity to do which was denied by the overruling of his motion.

Third Assignment of Error.

The action of the court in overruling the motion to arrest the judgment upon the first and third counts in the indictment.

The motion in arrest, R. p. 46, challenges each count in the indictment mainly on the ground that neither charges an offence. As to the second count, the court sustained the motion, arrested the judgment, and discharged the accused.

As to the first and third counts, the court declined to arrest the judgment, and this is the third assignment of error.

FIRST COUNT.

The plaintiff in error contends that the first count is insufficient because:

First. It fails to charge that the accused either voted or attempted to vote for a representative in Congress.

Second. It is repugnant in that it charges two separate and distinct offences, to wit, "personate and vote," and "attempt to vote."

Third. For uncertainty in that it fails to charge *who* the defendant personated or where he either voted or attempted to vote.

The section of the statute under which the plaintiff in error was convicted reads as follows, viz:

"SEC. 5511. If, at any election for representative or delegate in Congress, any person knowingly personates and votes, or attempts to vote, in the name of any other person, whether living, dead, or fictitious; or votes more than once at the same election for any candidate for the same office; or votes at a place where he may not be lawfully entitled to vote; or votes without having a lawful right to vote; or does any unlawful act to secure an opportunity to vote for himself or any other person; or by force, threat, intimidation, bribery, reward, or offer thereof, unlawfully prevents any qualified voter of any State, or of any Territory, from freely exercising the right of suffrage, or by any such means induces any voter to refuse to exercise such right, or compels, or induces, by any such means, any officer of an election in any such State or Territory to receive a vote from a person not legally qualified or entitled to vote; or interferes in any manner with any officer of such election in the discharge of his duties; or by any such means, or other unlawful means, induces any officer of an election or

officer whose duty it is to ascertain, announce, or declare the result of any such election, or give or make any certificate, document, or evidence in relation thereto, to violate or refuse to comply with his duty or any law regulating the same; or knowingly receives the vote of any person not entitled to vote, or refuses to receive the vote of any person entitled to vote, or aids, counsels, procures, or advises any such voter, person, or officer to do any act hereby made a crime, or omit to do any duty the omission of which is hereby made a crime, or attempt to do so, he shall be punished by a fine of not more than five hundred dollars, or by imprisonment not more than three years, or by both, and shall pay the costs of the prosecution."

The first count is in the following words, viz:

"The grand jurors of the United States, duly chosen, selected, empaneled, sworn, and charged to inquire of and concerning crimes and offences in the western district of Missouri and western division thereof, on their oaths present that on the 8th day of November, A. D. 1892, at Kansas City, in the county of Jackson and State of Missouri, there was then and there an election duly and in due form of law had and held for choice of representatives in the Congress of the United States, which said place aforesaid was then and there a portion of the fifth Congressional district of Missouri.

"And the grand jurors aforesaid, upon their oaths aforesaid, do further find and present that at the said election one Morris Blitz did then and there unlawfully, falsely, knowingly, and feloniously personate and vote and attempt to vote in the name of another person than his own name to these grand jurors unknown, contrary to the form of the statutes in such cases made and provided and against the peace and dignity of the United States."

First Point.

It is very obvious that the purpose and intent as well as the power of Congress is to prohibit the voting for a

candidate for a representative in Congress in the name of another person.

IT IS NOWHERE CHARGED IN THIS COUNT OF THE INDICTMENT THAT PLAINTIFF IN ERROR VOTED OR ATTEMPTED TO VOTE, IN THE NAME OF ANOTHER PERSON, FOR A CANDIDATE FOR REPRESENTATIVE IN CONGRESS.

The crime denounced under the Federal statute, and the only one that such a statute could denounce, is wanting in the averment of this count. True it is that as matter of inducement it is said that on a day and date given an election was held for choice of a representative in Congress, but as the court takes judicial notice that, at the day and date given, other than Federal officers were voted for, such a recital is utterly insufficient. It is no offence under this statute to vote in a false name at an election where a representative in Congress is chosen, *but only to so vote for a representative.* The indictment does not make such a charge, and no such charge can be eked out by intendment or assumption.

This question has been repeatedly decided in the Federal courts.

In the case of the U. S. *v.* Cahill (3 McCrary, 200; 9 Fed. Rep. 80) an indictment was brought in the eastern district of Missouri, under this identical section (5511), in which it was averred that on the 2d of November, 1880, at the third congressional district of the State of Missouri, a lawful election was held, at which said election a representative for said congressional district in the 47th Congress of the United States was voted for. The defendant was charged with preventing a qualified voter from depositing his ballot at the polling-place in the said election district, but failed to charge that the person whose vote was prevented was offering to vote for a representative in Congress. Judge Treat, in sustaining a demurrer to the indictment, says:

"It is essential that it be charged in the indictment that 'at an election for representative,' etc., the offence was committed; and it is not sufficient to allege that 'at an election at which a representative was voted for,' etc. It may be that the election in question was for some other purpose, over which the Federal Government had no control, and with which it had no right to interfere. But the defect is still graver when it is averred that, at an election where a representative was voted for, Batton was a qualified voter, etc., and entitled to vote, and that, when proceeding to offer and deposit his ballot, he was prevented by threats and intimidation; yet nowhere is it alleged that he offered or proposed, or was about to vote for, or was qualified to vote for, a representative in Congress. * * *

"Hence, should not the indictment specify that the election was for a representative in Congress; that the voter was qualified to vote for a representative at the time and place averred; that said qualified voter appeared at the polls and offered or attempted to vote for a representative in Congress; and that he was unlawfully interfered with in such attempted exercise of that specified right? * * *

"The court holds that the offence must be charged to have been for interference 'at a congressional election' with a voter qualified to vote and offering to vote for a representative in Congress."

In the case of The U. S. *v.* Seaman (23 Fed. Rep. 882), Judge Wallace, construing this section of the statute in considering an indictment charging the defendant with fraudulent attempt to vote in the name of another person, says:

"The essence of the crime created by section 5511 is an attempt to vote unlawfully for a representative in Congress, not an attempt to vote unlawfully at an election at which a representative may be voted for. The indictment should, therefore, have charged that such an attempt was made by the defendant.

"As there was no such averment, the defendant was improperly convicted."

In the case of The U. S. *v.* Morrissey (32 Fed. Rep. 147), which was an indictment under section 5514, the court, Judge Brewer (now Justice Brewer), in referring to the necessity of charging the offence in such a way as to give the Federal courts jurisdiction, says:

"In cases of this kind, where the act comes to the border line of Federal jurisdiction, it seems to us an imperative duty upon the court to hold the pleader to a distinct and clear averment of every fact which is essential to give Federal courts jurisdiction, and that we ought not by inference and presumption to open the door so as to include matters which may or may not be an offence against the United States. It is charged that this defendant knowingly received a ballot at that election. Who can say from that that it was a ballot for Congressman. We know judicially that that ballot was to contain the names of all the candidates, or might contain the names of all the candidates, but when he is charged with knowingly receiving a ballot, is he charged, or can it by any fair inference be assumed that he is charged, with receiving a ballot for Congressman?

"We think, under the clear rule of criminal pleading, that that count in the indictment does not charge an offence against the defendant, and the motion in arrest will be sustained."

Judge Thayer, in concurring in the opinion of the court, says:

"According to the authorities cited on the argument it is clear that the act charged in the indictment is no offence against the laws of the United States, unless the fraudulent ballot alleged to have been received by the defendant was a ballot for a candidate for Congress."

In this last-mentioned case the count charged that this ballot was received "at an election so held under the laws of the State of Missouri for representative in the 50th Con-

gress," but omitted to state that the ballot so received was a ballot for a candidate for such representative.

These cases show that the court takes judicial notice of the elections, and in the election which is the subject of examination in the case at bar the court will take notice that this election was for the choice of Presidential electors and State officers and county officers, as well as for a representative in Congress. If we are correct in this assumption, upon the authority herein cited the court must arrest the judgment upon the first count.

Second Point.

Repugnancy.

This count charges that the plaintiff in error "did then and there unlawfully, falsely, knowingly, and feloniously personate and vote and attempt to vote." By reference to the statute it is seen that an attempt to vote is an offence and that voting is an offence, both of which are punishable in the same degree. Each act is contradictory of the other. The attempt to vote precludes the idea of an accomplished act, while voting is equally an erroneous description of an attempt. No one can be properly charged with committing both the offences by the same act, which is necessarily so charged in this count in the indictment.

While it is true that where a statute declares several acts to be distinct offences, stated disjunctively, an indictment may properly charge the commission of these acts conjunctively, still the rule is subject to this exception: that the offences stated must not be repugnant to one another. Allegations in one count that an act was committed and attempted to be committed are repugnant. If the defendant be guilty of an attempt to commit an act, he cannot be guilty of committing the act, and conversely.

Wharton on Crim. Law, vol. 1, p. 254, sec. 294 *et seq.*
Wharton Crim. Law, vol. 1, sec. 396.
State *v.* Fitzsimons, 30 Mo. 24.
U. S. *v.* O'Callahan, 6 McLean, 596.
State *v.* Grant, 53 N. W. Rep., p. 190.
Archibald's Crim. Pract. & Plead., vol. 1, p. 271.
Com. *v.* Powell, 8th Bush. 7.
Reed *v.* People, 1 Parker, C. Rep. p. 481.
People *v.* Wright, 9 Wend. 196.
Miller *v.* State, 5 How. (Miss.) 250.
State *v.* Green, 24 Mo. App. 227.
State *v.* Haven, 59, 399.
State *v.* Pearson, 44 Ark. 265.
State *v.* Johnson, 5 Jones N. C. L. 221.
Westbook *v.* State, 23 Tex. App., p. 401.
People *v.* Van Alstyne, 37 Mich. 69.

Third Point.

Uncertainty.

The first count is bad for uncertainty. The indictment charges the plaintiff in error with voting and attempting to vote at Kansas City in the name of another person (not stated) to the grand jurors unknown. This allegation leaves out any averment as to the voting precint at which he voted or attempted to vote or the name of the person, whether living, dead, or fictitious, whom the plaintiff in error undertook to personate.

It is submitted that under the constitutional guarantee that a person charged with a crime shall be informed of the nature and cause of the accusation against him, such a vague charge as is contained in this count is utterly insufficient to comply with that constitutional provision; and

this indictment certainly would not be a good plea of former conviction to an indictment charging the defendant with voting in the name of a specified person at a particular polling-place.

This count will be more fully considered in the objections to the third count, and the authorities there cited are applicable here.

A further objection to this count is that the grand jury aver that the name of the person alleged to have been personated was unknown. If that be true the count is insufficient, for the very essence of the offence is personating some one else; and if there was no evidence before the grand jury as to the person or the name personated, they were unwarranted in finding an indictment.

While the language of the statute may have been followed, a description of the crime cannot be sufficiently set out in an indictment by following the general words of the statute when those words are a general description of the crime. The particulars must be averred in order to make the indictment good.

U. S. *v.* Hess, 124 U. S. 483.

THIRD COUNT.

The plaintiff in error contends that the third count is insufficient in itself to charge an offence, because—

First. It fails to describe any election that was held, or aver otherwise than by reference to another count, that an election was held.

Second. It is uncertain in failing to aver that the voting was more than once for the *same* candidate or for a candidate for the *same term* of the same office, or distinctly avers that the felonious voting charged was more than once.

The third count is in the following words, to wit:

"*Third.* And the grand jurors aforesaid, upon their oaths aforesaid, in the name and by the authority of the United States, do further find and present that at the said election the said Morris Blitz did then and there, in the western division of the western district of Missouri, unlawfully, knowingly, and feloniously vote at said election for a candidate for the same office for representative in the Congress of the United States, more than once, contrary to the form of the Statute in such cases made and provided and against the peace and dignity of the United States."

FIRST POINT.

Each count of an indictment in judgment of law charges a separate and distinct offence, and is in fact and theory a separate indictment.

U. S. *v.* Malone, 9 Fed. Rep. 897.

There can be no doubt that it was absolutely necessary to aver that an election was being held at which the accused could have voted. There is no such averment in this count, and the question arises whether the use of the words "said election" imports into the count all the allegations in that respect of the first count. We contend that it does not.

The rule, we claim, is as stated in *Keech* v. *State*, 15 Fla. 591, to wit:

"A second or subsequent count in an indictment should contain a statement of all necessary facts and allegations to charge the offence. A reference to a former count for the purpose of supplying a material statement is not sufficient."

In Bishop Criminal Procedure the author says:

"To some extent the pleader may avoid repetitions by referring from one count to another, as to describe the de-

fendant or another person. * * * *The reference* must be so full and distinct as, in effect, to incorporate the matter going before with that in the count in which it is made."

1 Bish. Crim. Proc., 3d ed., sec. 431.

In Rex *v.* Martin, 9 Car. & P. 215, the first count charged an assault upon Esther Ricketts, an infant above the age of ten and under the age of twelve years, and the second charged, in a different form, an attempt to have carnal knowledge of the "said Esther Ricketts." This reference was held not to carry with it the allegation that she was an infant above the age of ten and under the age of twelve.

In State *v.* Lyon, 17 Wis. 237, this question was very carefully considered. The first count charged a larceny of goods of a value mentioned, owned by a certain person, and a second alleged a receiving of the "goods aforesaid." This reference was held not to draw into the second count the allegation of value and ownership contained in the first.

The court say:

"But the word 'aforesaid' does not necessarily or naturally imply that the property is of the value mentioned in the first count, or that it belongs to the same person. It merely means that it is the same property mentioned in the first count."

In fact, the allegation of this count renders it doubtful whether the averment in the first count as to the election in Kansas City is the one meant, for it charges the voting to have been "then and there, in the western division of the western district of Missouri," which would not only include Kansas City but several congressional districts and innumerable voting precincts.

SECOND POINT.

By reference to the language of this court it will be seen that the offence is charged without even an attempt at par-

ticularity; the place where the voting was done is not given otherwise than in the "western division of the western district of Missouri;" whether the second voting was at the same polling-place; whether it was in the accused's own name or in the name of another person; whether it was twice for the same candidate or for different candidates.

No one could properly prepare a defence to a charge so indefinitely described. The pleader in this count transposes the words "more than once" from where they appear in the statute, and inserts them at the end of the paragraph, so that it makes it uncertain whether they refer to voting or to some other antecedent; whether it was a candidate more than once that was voted for, or whether it was a representative more than once that was voted for. In criminal pleading the averments are always taken against the pleader; he must make his meaning so clear that it cannot be misunderstood.

Another matter is left out, and that is it does not charge that the voting was for a candidate for the *same term* of the same office.

If, for instance, a vacancy existed in the fifth congressional district, would it be an offence to vote for a candidate to fill that vacancy, and, at the same election, to vote for a candidate for the full term, yet both would be candidates for the same office? How can the court say this was not what the accused did? Can it take judicial notice whether or not such a vacancy existed?

It is submitted that to charge simply in the words of this statute is not sufficient.

State *v.* Bacon, 7 Vt. 219.
Phelps *v.* People, 72 N. Y. 234.
State *v.* Perham, 4 Ogn. 188.
—— Packard, 4 Ogn. 157.
Portwood *v.* State, 29 Texas, 47.

Williams *v.* State, 12 Tex. App. 395.
Hoskey *v.* State, 9 Texas, 202.
State *v.* Campbell, 29 Texas, 44.
U. S. *v.* Hess, *supra.*

The reasons for the rule as to certainty are given by Wharton, as follows, sec. 299, vol. 1 :

(*a*) In order to identify the charge, lest the grand jury should find a bill for one offence and the defendant be put upon his trial, in chief, for another, without any authority.

(*b*) That the defendant's conviction or acquittal may enure to his subsequent protection, should he be again questioned on the same grounds ; the offence, therefore, should be defined by such circumstances as will, in such case, enable him to plead a previous conviction or acquittal of the same offence.

(*c*) To warrant the court in granting or refusing any particular right or indulgence, which the defendant claims as incident to the nature of the case.

(*d*) To enable the defendant to prepare for his defence in particular cases, and to plead in all, or, if he prefer it, to submit to the court by demurrer whether the facts alleged (supposing them to be true) so support the conclusion in law as to render it necessary for him to make any answer to the charge.

(*e*) Finally and chiefly, to enable the court, looking at the record after conviction, to decide whether the facts charged are sufficient to support a conviction, of the particular crime, and to warrant their judgment; and also, in some instances, to guide them in the infliction of a proportionate measure of punishment upon the offender.

Tested by either of these rules it is very obvious that the pleader has failed in this count to acquaint the accused with

the nature and cause of the accusation, to have utterly failed to give him an opportunity of pleading his conviction in bar of another prosecution, and to have made it impossible for him to have prepared for his defence.

The judgment should be arrested and the plaintiff in error should be discharged from imprisonment.

JOHN C. FAY,
Att'y for Plaintiff in Error.

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CLERK

In the Supreme Court of the United States.

OCTOBER TERM, 1893.

MORRIS BLITZ, PLAINTIFF IN ERROR,
v.
THE UNITED STATES.
No. 1102.

IN ERROR TO THE DISTRICT COURT OF THE UNITED STATES FOR THE WESTERN DISTRICT OF MISSOURI.

BRIEF FOR THE UNITED STATES.

In the Supreme Court of the United States.

OCTOBER TERM, 1893.

MORRIS BLITZ, PLAINTIFF IN ERROR,
v.
THE UNITED STATES. } No. 1102.

The plaintiff in error, Morris Blitz, was convicted in the U. S. district court for the western diviision of the western district of Missouri on November 8, 1893, on an indictment found at the April term, 1893, of that court, which charged him with the violation of section 5511, Revised Statutes, for fraudulent voting, etc., at elections for a Representative to Congress.

ASSIGNMENTS OF ERROR.

The indictment consists of three counts.

The first count charges that—

> On the 8th day of November, 1892, at Kansas City, in the county of Jackson and State of Missouri, there was then and there an election duly and in due form of law had and held for choice of Representative in the Congress of the United States, which said place aforesaid was then and there a portion of the Fifth Congressional district of Missouri.

> * * * That at the said election one Morris Blitz did then and there unlawfully, falsely, knowingly, and feloniously personate and vote and attempt to vote in the name of another person other than his own name, to these grand jurors unknown, etc.

The third count charged—

> That at the said election the said Morris Blitz did then and there, in the western division of the western d strict of Missouri, unlawfully, knowingly, and feloniously vote at said election for a candidate for the same office for Representative in the Congress of the United States more than once, etc.

Section 5511, Revised Statutes, provides:

> If at any election for Representative or Delegate in Congress any person knowingly personates and votes, or attempts to vote, in the name of any other person, whether living, dead, or fictitious, or votes more than once at the same election, for any candidate for the same office, or votes at a place where he may not be lawfully entitled to vote, * * * he shall be punished by a fine of not more than $500, or by imprisonment not more than three years, or by both, and shall pay the costs of the prosecution.

In the record of the case or in the brief of the counsel for plaintiff in error there is no assignment of errors.

There does not appear to have been any demurrer to this indictment or to either of the counts thereof.

There does appear to have been a motion for a new trial and another motion in arrest of judgment.

The bill of exceptions which was taken on the 15th day of December, 1893, will be found on pp. 7–47 of the record. It embraces the affidavits which were taken, offered, and read in support of the motion for a new trial.

The motion in arrest of judgment was filed on the 23d day of November, 1893, p. 46, and was rested on five grounds, which upon examination will be seen to be in fact but two grounds: one a demurrer to the indictment and the several counts thereof; the other, a motion for a new trial, in disguise.

In the brief of counsel [Mr. John A. Beebe, the only brief now filed, this 27th of March, 1894] three points only appear to be relied on.

(1) That the first count is defective in that it charges that the defendant unlawfully and knowingly personated and voted; and, also, that he attempted to vote in the name of another person. The argument of counsel being that—

> Allegations in one count that an act was committed and attempted to be committed are repugnant. If the defendant be guilty of an attempt to commit an act, he cannot be guilty of committing the act—and conversely.

(2) The third count is objected to on the ground—

> It refers to the first count in respect of the material descriptive allegation, to wit: The holding of an election for the choice of Representatives to Congress.

(3) This is to a ruling of the court in refusing to allow a question propounded to a witness to be answered, to wit: "Why did you not arrest Blitz when you saw him vote?"

ARGUMENT.

If this indictment, or either of its counts, is open to objection, that objection should have been taken by demurrer and can not be availed of on a motion for a new trial, or in arrest of judgment.

This court has repeatedly decided that the granting or refusing a motion for a new trial rests in the discretion of the trial court and is not reviewable here on writ of error. (*Railroad Co.* v. *Fraloff*, 100 U. S., 24; *Wabash R. R. Co.* v. *McDaniel*, 107 U. S., 456; *Terre Haute and I. R. R. Co.* v. *Struble*, 100 U. S., 385.)

And a motion *in arrest of judgment* has no more effect than a motion for a new trial and can not be reviewed on writ of error. (*Canal and C. Street R. R.* v. *Hart*, 114, U. S. 660.)

Technical defects in an indictment afford no ground for motion in arrest of judgment.

Section 1025, Revised Statutes, provides that no indictment shall be deemed insufficient, "nor shall the trial, judgment, or other proceeding thereon be affected by reason of any defect or imperfection in matter of form only, which shall not tend to the prejudice of the defendant."

An imperfect statement of the substance of a crime or a description of it will not avail in arrest of judgment if the statement be such as to be understood by anyone interested in understanding it, or if the subject-matter therein described can be identified by the description contained in such statement. (*United States* v. *Conant*, 9 Cent. Law Jour., 129.)

An averment that the defendant knowingly deposited a letter, without an averment that he knew it to be obscene. (*United States* v. *Chase*, 27 Feb. Rep., 807.)

There can be no doubt that the indictment here sufficiently apprises the defendant of the offense with which he is charged to enable him to prepare his defense. It

states the time, place, occasion on which he is alleged to have personated and attempted to vote in the name of another person, and when he attempted to vote more than once.

Even if it be true that certain counts might be held bad on demurrer for duplicity or repugnancy, yet that does not affect the fact that the offense charged is so distinctly defined as to enable the defendant to prepare his defense, or avail him in support of a plea in bar, to any future prosecution for the same offense.

And as the objection is presented here in no other way than by these two motions, it would seem to be clear under the practice of this court that it can not be entertained and considered. Objection of duplicity can not be taken on arrest of judgment. (Whar. Crim. Pr. and Pl., 243–245.)

But even if it should be considered here, the judgment of the court below was plainly right in sustaining the indictment.

(1) The description of two criminal offenses in one count does not make that count bad for duplicity.

In *Commonwealth* v. *Thompson* (116 Mass., 348), where a like objection was made, the court said:

> That allegations of facts connected with the particular offense intended to be charged, and showing that another offense was committed at the same time and by the same acts as set forth, do not necessarily amount to duplicity in pleading.

A count charging the breaking and entering of a dwelling house in the daytime, with intent to steal, take, and

carry away, and also actual stealing therefrom, is not bad for duplicity. (*Commonwealth* v. *Hope*, 22 Pick., 1; *Commonwealth* v. *Tuck*, 20 Pick., 356; *Commonwealth* v. *Eaton*, 15 Pick., 273.)

So, a count charging an assault with intent to commit rape and the actual commission of rape is not bad for duplicity. (*Harman* v. *Commonwealth*, 12 Sergt. & Raw., 69; *Buck* v. *The State*, 2 Har. and John, 426.)

When a statute makes either of two or more distinct acts connected with the same general offense, and subject to the same measure and kind of punishment, indictable separately and as distinct crimes, when committed by different persons or at different times, they may, when committed by the same person at the same time, be coupled in one count as constituting one offense. (*United States* v. *Fero*, 18 Fed. Rep., 902.)

Duplicity in pleading is cured by verdict and will not support a motion in arrest of judgment. (*Pickering* v. *Mississippi, etc., Co.*, 47 Mo., 457; *House* v. *Lowell*, 45 Mo., 381.)

The case of *State* v. *Nelson* (8 New Hamp., 163), which appears to hold the contrary view, rests upon very ancient authorities and very narrow reasoning. (See, too, Whar. Crim. Prac. and P., 243; 1 Chit. Crim. L., 250.)

(2) It is not necessary to repeat in each of the subsequent counts the descriptive averments of the subject that have been specifically made in the first count, but these may be referred to by the use of the word "said."

> The relative "said" used in one of the subsequent counts of an indictment, referring to matters in a previous count, is always to be taken to refer to the

> count immediately preceding when the sense of the whole indictment does not forbid such a reference. (Whar. Cr. Pr. and Pl., 9 ed., sec. 298.)

Here the descriptive allegations are set forth in the first count; and although the court below appears to have sustained the motion in arrest of judgment as to the second count, yet the word "said" in the third count will be taken to refer to the second count, even although the second count should be held bad, and through the second count to the first.

> Where the first count of an indictment is bad, or is abandoned by the prosecution, a subsequent count may be sustained, even though it refers to the first count for some allegations without repeating it. (*Ibid.*, sec. 299.)

The references here in the third count are to the election described as to time and place of the first count and to the defendant as "the said Morris Blitz did then and there."

But here, in the worst aspect of the case, as there was no demurrer to the several counts, if any one count is good the indictment must stand and the judgment of conviction be affirmed, and the first count, as we have seen, is free from objection.

(3) James F. Wachs, a witness called on behalf of the United States, proved that he was a special deputy U. S. marshal on duty at the voting place all day; that he had known the defendant about three years; that he saw the defendant vote about 10 o'clock in the morning and saw him come back and vote again between 3 and 4 in the evening. On cross-examination, he was asked, on behalf

of defendant, the following question: "Why did you not arrest Blitz when you saw that he had voted?" The question was objected to on behalf of the United States and the objection was sustained by the court, and this ruling of the court is assigned here as error.

It is insisted in the brief of counsel that the question was proper, because it tended to test the accuracy, veracity, or credibility of the witness; and many authorities are cited in support of the position, that on cross-examination any matters which limit, qualify, or explain the facts stated in the direct examination, or modify the inference deducible therefrom, may be inquired into, "provided, only, that such matters are directly connected with the facts testified to in chief."

We do not question the soundness of any of these general propositions, or challenge the authorities cited in their support. We submit, however, that they have no sort of application to the question here.

It will be observed that the witness had testified nothing in his direct examination as to the arrest of Blitz. It had not been disclosed then, or now, whether the witness had arrested Blitz or not. And yet, the question as propounded, assumes as a fact what had not appeared, to wit, that the witness had *not* arrested Blitz when, it is alleged, that it was his duty to do so.

Again, the mind of the witness is not directed by this question to any particular time or occasion; he is not asked, why did you not arrest Blitz when you saw him vote the *first* or the *second* time, but why did you not arrest him "when you saw that he had voted?"

Whatever the purpose of counsel may have been in framing this question it is evidently a "catch" question, calculated to entrap the witness, whether so designed or not.

But the whole matter of cross-examination of the witness is within the discretion of the court, and that discretion is not subject to review on writ of error. (*Rea* v. *Missouri*, 17 Wall., 532; *Storm* v. *United States*, 94 U. S., 76.)

> The extent to which the cross-examination of a witness as to credit may be carried, must be left to the judge presiding at the trial. And if matters which are merely immaterial, or which *tend to show the reasons of the witness* for his opinions, or his fairness of mind, are admitted in cross-examination, there is, as a general rule, no exception. (1 Greenleaf on Ev., 15 ed., sec. 448—notes.)

It will be remembered here that the question is designed to elicit the reasons of the witness, not for something that he did do, but for something that he did not do, to wit, arrest the defendant.

Now, inasmuch as the witness did no act, his reason must be purely a speculative one, and it would be simply extracting from the witness his *opinion* as to whether the defendant's conduct amounted to a criminal offense which would justify his arrest, and also whether, in the opinion of the witness, it was or was not his duty to have made such arrest. We think, that upon whichever ground it may be placed or from whatever point of view regarded, that the ruling of the court below in not allowing the

question to be answered can not be safely or properly reviewed here in the light which this record affords.

We do not think there is error in the rulings of the court on either of the grounds assigned.

HOLMES CONRAD,
Assistant Attorney-General.